FORM 8-K

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

Form 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934
Date of Report (Date of earliest event Reported): April 1, 2021

CUSTOM TRUCK ONE SOURCE, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	001-38186	84-2531628
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

7701 Independence Ave Kansas City, Missouri	64125
(Address of principal executive offices)	(Zip code)

816-241-4888
(Registrant's telephone number, including area code)
Nesco Holdings, Inc.
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading Symbol(s)	Name of Exchange on Which Registered
Common Stock, $0.0001 par value	CTOS	New York Stock Exchange
Redeemable warrants, exercisable for Common Stock, $0.0001 par value	CTOS.WS	New York Stock Exchange

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

Emerging growth company ☐

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

Introduction

In this Current Report on Form 8-K, "we," "us," "our" and the "Company" refers to Custom Truck One Source, Inc., a Delaware corporation formerly known as Nesco Holdings, Inc.

As previously announced, on December 3, 2020, the Company and NESCO Holdings II, Inc., a subsidiary of the Company ("**Buyer**" or the "**Issuer**"), entered into a Purchase and Sale Agreement (the "**Purchase Agreement**") with certain affiliates of The Blackstone Group ("**Blackstone**") and other direct and indirect equity holders (collectively, "**Sellers**") of Custom Truck One Source, L.P. ("**CTOS**"), Blackstone Capital Partners VI-NQ L.P. and, solely with respect to Section 9.04 of the Purchase Agreement, PE One Source Holdings, LLC, an affiliate of Platinum Equity ("**Platinum**"), pursuant to which Buyer agreed to acquire 100% of the partnership interests of CTOS (collectively, the "**Acquisition**"). In connection with the Acquisition, the Company and certain Sellers entered into Rollover and Contribution Agreements (the "**Rollover Agreements**"), pursuant to which such Sellers agreed to contribute a portion of their equity interests in CTOS (the "**Rollovers**") with an aggregate value of $100.5 million in exchange for shares of the Company's common stock, par value $0.0001 per share (the "**Common Stock**"), valued at $5.00 per share.

Also as previously announced, on December 3, 2020, the Company entered into a Common Stock Purchase Agreement (the "**Investment Agreement**") with Platinum, relating to, among other things, the issuance and sale (the "**Subscription**") to Platinum of Common Stock, for an aggregate purchase price in the range of $700 million to $763 million, with the specific amount to be calculated in accordance with the Investment Agreement based upon the total equity funding required to fund the consideration to be paid pursuant to the terms of the Purchase Agreement. The shares of Common Stock issued and sold to Platinum have a purchase price of $5.00 per share. In accordance with the Investment Agreement, on December 21, 2020, the Company entered into Subscription Agreements (the "**Subscription Agreements**") with certain investors (the "**PIPE Investors**") to finance in part the Acquisition. Pursuant to the Subscription Agreements, concurrently with the closing of the transactions contemplated by the Investment Agreement, the PIPE Investors agreed to purchase an aggregate of 28,000,000 shares of Common Stock at $5.00 per share for an aggregate purchase price of $140 million (the "**Supplemental Equity Financing**").

The foregoing descriptions of the Purchase Agreement, Rollover Agreements and Investment Agreement do not purport to be complete, and are qualified in their entirety by reference to the full text of the Purchase Agreement, Form of Rollover Agreement and Investment Agreement, which are filed herewith as Exhibits 2.1, 10.1 and 10.2, respectively, and are incorporated herein by reference.

On April 1, 2021 (the "**Closing Date**"), the Issuer issued $920 million in aggregate principal amount of 5.50% senior secured second lien notes due 2029 (the "**Notes**"). The Notes were issued pursuant to an indenture, dated as of April 1, 2021, between the Issuer, Wilmington Trust, National Association, as trustee and the guarantors party thereto (the "**Indenture**"). The Issuer will pay interest on the Notes semi-annually in arrears on April 15 and October 15 of each year, commencing on October 15, 2021. Unless earlier redeemed, the Notes will mature on April 15, 2029. The Notes were offered in a private placement exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), to qualified institutional buyers pursuant to Rule 144A under the Securities Act and to certain non-U.S. persons outside of the United States in reliance on Regulation S under the Securities Act. The proceeds from the issuance and sale of the Notes were used to consummate the Acquisition and related transactions.

On the Closing Date, Buyer, its direct parent, and certain of its direct and indirect subsidiaries entered into a senior secured asset based revolving credit agreement (the "**ABL Credit Agreement**") with Bank of America, N.A., as administrative agent and collateral agent, and certain other lenders party thereto, consisting of a $750.0 million first lien senior secured asset based revolving credit facility with a maturity of five years (the "**ABL Facility**"), which includes borrowing capacity for revolving loans (with a swingline subfacility) and the issuance of letters of credit (the "**ABL Debt Financing**" and, together with the Notes issuance described above, the "**Debt Financing**").

On the Closing Date, the Company completed the Acquisition, the Rollovers, the Subscription, the Supplemental Equity Financing and the Debt Financing (the "**Closing**").

On the Closing Date, in connection with (i) the Rollovers, the Company issued, in the aggregate, 20,100,000 shares of Common Stock to the parties to the Rollover Agreements, (ii) the Subscription, the Company issued 148,600,000 shares of Common Stock to Platinum and (iii) the Supplemental Equity Financing, the Company issued, in the aggregate, 28,000,000 shares of Common Stock to the PIPE Investors.

Item 1.01 Entry into a Material Definitive Agreement.

Indenture

The information set forth above under the heading "Introduction" is incorporated herein by reference.

Ranking and Security

The Notes are jointly and severally guaranteed on a senior secured basis by Capitol Investment Merger Sub 2, LLC and, subject to certain exceptions, each of the Issuer's existing and future wholly owned domestic restricted subsidiaries that is an obligor under the ABL Credit Agreement or certain other capital markets indebtedness. Under the terms of the Indenture, the Notes and the related guarantees rank senior in right of payment to all of the Issuer's and the guarantors' subordinated indebtedness and are effectively senior to all of the Issuer's and the guarantors' unsecured indebtedness, and indebtedness secured by liens junior to the liens securing the Notes, in each case, to the extent of the value of the collateral securing the Notes. The Notes and the related guarantees rank equally in right of payment with all of the Issuer's and the guarantors' senior indebtedness, without giving effect to collateral arrangements, and effectively equal to all of the Issuer's and the guarantors' senior indebtedness secured on the same priority basis as the Notes. The Notes and the related guarantees are effectively subordinated to any of the Issuer's and the guarantors' indebtedness that is secured by assets that do not constitute collateral for the Notes to the extent of the value of the assets securing such indebtedness, and indebtedness that is secured by a senior-priority lien, including the ABL Credit Agreement to the extent of the value of the collateral securing the Notes, and are structurally subordinated to the liabilities of the Issuer's non-guarantor subsidiaries.

Optional Redemption Provisions and Repurchase Rights

At any time, upon not less than 10 nor more than 60 days' notice, the Notes are redeemable at the Issuer's option, in whole or in part, at a price equal to 100% of the principal amount of the Notes redeemed, plus a make-whole premium as set forth in the Indenture, plus accrued and unpaid interest, if any, to, but not including, the applicable redemption date. Beginning April 15, 2024, the Issuer may redeem the Notes, at its option, in whole or in part, at any time, subject to the payment of a redemption price together with accrued and unpaid interest, if any, to, but not including, the applicable redemption date. The redemption price includes a call premium that varies (from 2.750% to 0%) depending on the year of redemption.

In addition, at any time prior to April 15, 2024, the Issuer may redeem up to 40% of the aggregate principal amount of the Notes, at a redemption price equal to 105.500% of the principal amount thereof, together with accrued and unpaid interest, if any, to, but not including, the applicable redemption date, with the net cash proceeds of sales of one or more equity offerings by the Issuer or any direct or indirect parent of the Issuer, subject to certain exceptions.

In addition, at any time prior to April 15, 2024, the Issuer may redeem during each calendar year up to 10% of the aggregate principal amount of the Notes at a redemption price equal to 103% of the aggregate principal amount of the Notes to be redeemed, together with accrued and unpaid interest, if any, to, but not including, the applicable redemption date; *provided* that in any given calendar year, any amount not previously utilized in any calendar year may be carried forward to subsequent calendar years.

Subject to certain exceptions, the holders of the Notes also have the right to require the Issuer to repurchase their Notes upon the occurrence of a change in control, as defined in the Indenture, at an offer price equal to 101% of the principal amount of the Notes plus accrued and unpaid interest, if any, to, but not including, the date of repurchase.

In addition, if the Issuer or any of its restricted subsidiaries sells assets, under certain circumstances, the Issuer is required to use the net proceeds to make an offer to purchase the Notes at an offer price in cash equal to 100% of the principal amount of the Notes plus accrued and unpaid interest to, but not including, the repurchase date.

In connection with any offer to purchase all or any of the Notes (including a change of control offer and any tender offer), if holders of no less than 90% of the aggregate principal amount of the Notes validly tender their Notes, the Issuer or a third party is entitled to redeem any remaining Notes at the price offered to each holder.

Restrictive Covenants

The Indenture contains covenants that limit the Issuer's (and certain of its subsidiaries') ability to, among other things: (i) incur additional debt or issue certain preferred stock; (ii) pay dividends, redeem stock or make other distributions; (iii) make other restricted payments or investments; (iv) create liens on assets; (v) transfer or sell assets; (vi) create restrictions on payment of dividends or other amounts by the Issuer to the Issuer's restricted subsidiaries; (vii) engage in mergers or consolidations; (viii) engage in certain transactions with affiliates; or (ix) designate the Issuer's subsidiaries as unrestricted subsidiaries.

Events of Default

The Indenture provides for customary events of default, including non-payment, failure to comply with covenants or other agreements in the Indenture and certain events of bankruptcy or insolvency. If an event of default occurs and continues with respect to the Notes, the trustee or the holders of at least 30% in aggregate principal amount of the outstanding Notes of such series may declare the entire principal amount of all the Notes to be due and payable immediately (except that if such event of default is caused by certain events of bankruptcy or insolvency, the entire principal of the Notes will become due and payable immediately without further action or notice).

The foregoing descriptions of the Indenture and the Form of Notes do not purport to be complete, and are qualified in their entirety by reference to the full text of the Indenture and Form of Notes, which are filed herewith as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference.

ABL Credit Agreement

In connection with the Acquisition, Buyer, as borrower, and the ABL Guarantors (as defined below) entered into the ABL Credit Agreement. The ABL Facility provides for revolving loans, in an amount equal to the lesser of the then-current borrowing base (described below) and the committed maximum borrowing capacity of $750.0 million, with a $75.0 million swingline sublimit, and letters of credit in an amount equal to the lesser of (a) $50.0 million and (b) the aggregate unused amount of commitments under the ABL Facility then in effect. The ABL Facility permits Buyer to incur additional capacity under the ABL Facility in an aggregate amount equal to the greater of (x) $200.0 million and (y) 60.0% of Consolidated EBITDA (as defined in the ABL Credit Agreement) in additional commitments. As of the Closing Date, Buyer will have no commitments from any lender to provide incremental commitments.

Borrowings under the ABL Facility will be limited by a borrowing base calculation based on the sum of, without duplication:

(a) 90.0% of book value of eligible accounts of Buyer and certain ABL Guarantors; plus

(b) the lesser of (i) 75.0% of book value of eligible parts inventory of Buyer and certain ABL Guarantors (subject to certain exceptions) and (ii) 90.0% of the net orderly liquidation value of eligible parts inventory of Buyer and certain ABL Guarantors; plus

(c) the sum of (i) 95.0% of the net book value of the eligible fleet inventory of Buyer and certain ABL Guarantors that has not been appraised and (ii) 85.0% of the net orderly liquidation value of the eligible fleet inventory of Buyer and certain ABL Guarantors that has been appraised; plus

(d) 100.0% of eligible cash of Buyer and certain ABL Guarantors; minus

(e) any reserves established by the administrative agent from time to time.

Borrowings under the ABL Facility will bear interest at a floating rate, which, at Buyer's election, will be (a) in the case of U.S. dollar denominated loans, either (i) LIBOR plus an applicable margin or (ii) the base rate plus an applicable margin or (b) in the case of Canadian dollar denominated loans, the CDOR rate plus an applicable margin. The applicable margin varies based on Average Availability (as defined in the ABL Credit Agreement) from (a) with respect to base rate loans, 0.50% to 1.00% and (b) with respect to LIBOR loans and

CDOR rate loans, 1.50% to 2.00%. The ability to draw under the ABL Facility or issue letters of credit thereunder is conditioned upon, among other things, delivery of prior written notice of a borrowing or issuance, as applicable, the ability to reaffirm the representations and warranties contained in the ABL Credit Agreement and the absence of any default or event of default under the ABL Facility.

Buyer is required to pay a commitment fee to the lenders under the ABL Facility in respect of the unutilized commitments thereunder at a rate equal to 0.375% per annum, which may be reduced following the first full fiscal quarter to 0.250% per annum based on average daily usage. Buyer must also pay customary letter of credit and agency fees.

The balance outstanding under the ABL Facility will be due and payable on April 1, 2026. Buyer may at any time and from time to time to prepay, without premium or penalty, any borrowing under the ABL Facility and to terminate, or from time to time reduce, the commitments under the ABL Facility.

The obligations under the ABL Facility are guaranteed by Capitol Investment Merger Sub 2, LLC, Buyer and each of Buyer's existing and future direct and indirect wholly owned domestic restricted subsidiaries, subject to certain exceptions, as well as certain of Buyer's material Canadian subsidiaries (the "**ABL Guarantors**"). The obligations under the ABL Facility and the guarantees of those obligations are secured by (subject to certain exceptions): (i) a first priority pledge by each ABL Guarantor of all of the equity interests of restricted subsidiaries directly owned by such ABL Guarantors (limited to 65% of voting capital stock in the case of foreign subsidiaries owned directly by a U.S. subsidiary and subject to certain other exceptions) and subject to certain exceptions in the case of non-wholly owned subsidiaries and (ii) a first priority security interest in substantially all of the ABL Guarantors' present and after-acquired assets (subject to certain exceptions).

The ABL Facility contains customary negative covenants for transactions of this type, including covenants that, among other things, limit Buyer's and its restricted subsidiaries' ability to: incur additional indebtedness; pay dividends, redeem stock or make other distributions; repurchase, prepay or redeem subordinated indebtedness; make investments; create restrictions on the ability of Buyer's restricted subsidiaries to pay dividends to Buyer; create liens; transfer or sell assets; consolidate, merge, sell or otherwise dispose of all or substantially all of Buyer's assets; enter into certain transactions with Buyer's affiliates; and designate subsidiaries as unrestricted subsidiaries, in each case certain to subject exceptions, as well as a restrictive covenant applicable to each Specified Floor Plan Company (as defined in the ABL Credit Agreement) limiting its ability to own certain assets and engage in certain lines of business. In addition, the ABL Facility contains a springing financial covenant that requires Buyer and its restricted subsidiaries to maintain a Consolidated Fixed Charge Coverage Ratio (as defined in the ABL Credit Agreement) of at least 1.00 to 1.00; provided that the financial covenant shall only be tested when Specified Excess Availability (as defined in the ABL Credit Agreement) under the ABL Facility is less than the greater of (i) 10.0% of the Line Cap (as defined in the ABL Credit Agreement) and (ii) $60.0 million (the "**FCCR Test Amount**"), in which case it shall be tested at the end of each succeeding fiscal quarter thereafter until the date on which Specified Excess Availability (as defined in the ABL Credit Agreement) has exceeded the FCCR Test Amount for 30 consecutive calendar days.

The ABL Facility provides for a number of customary events of default, including, among others, and in each case subject to an applicable grace period: payment defaults to the lenders; covenant defaults; material inaccuracies of representations and warranties; failure to pay certain other indebtedness after final maturity or acceleration of other indebtedness exceeding a specified amount; voluntary and involuntary bankruptcy proceedings; material judgments for payment of money exceeding a specified amount; and certain change of control events. The occurrence of an event of default could result in the acceleration of obligations and the termination of revolving commitments under the ABL Facility.

The foregoing description of the ABL Credit Agreement does not purport to be complete, and is qualified in its entirety by reference to the full text of the ABL Credit Agreement, which is filed herewith as Exhibit 10.3 and is incorporated herein by reference.

Registration Rights Agreement

On the Closing Date, the Company and the PIPE Investors entered into a Registration Rights Agreement (the "**Registration Rights Agreement**"). Pursuant to the terms of the Registration Rights Agreement, among other things, the Company is obligated to file a registration statement to register the resale under the Securities Act of the shares of Common Stock subscribed for by the PIPE Investors pursuant to the Subscription Agreements.

The foregoing description of the Registration Rights Agreement does not purport to be complete, and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, which is filed herewith as Exhibit 10.4 and is incorporated herein by reference.

Stockholders' Agreement

On the Closing Date, in connection with the closing of the Acquisition, the Subscription and the Rollovers, the Company, Platinum, affiliates of, or affiliated investment entities of, Blackstone, certain affiliates of Energy Capital Partners ("**ECP**"), Capitol Acquisition Management IV, LLC and Capitol Acquisition Founder IV, LLC (together, "**Capitol**") and certain other stockholders of the Company entered into an Amended and Restated Stockholders' Agreement (the "**Amended and Restated Stockholders' Agreement**").

The Amended and Restated Stockholders' Agreement provides that Platinum will have the right to designate up to seven nominees for the election to the Company's Board of Directors (the "**Board**"), three of which are required to be independent directors. In addition, while Platinum beneficially owns 50% or more of the outstanding shares of Common Stock, the Amended and Restated Stockholders' Agreement does not restrict Platinum from nominating additional directors and soliciting stockholders outside of the Company's proxy statement, subject to the rights of the other parties to the Amended and Restated Stockholders' Agreement. Each Platinum designee director who is not an independent director will have two votes on the Board. For so long as Platinum beneficially owns less than 50% but more than 30% of the Common Stock, Platinum will have the right (but not the obligation) to designate any number of directors, who are not independent directors, having one or two votes each, so long as the total number of votes of all such designees does not exceed the difference of the total number of votes constituting a majority of all votes of all directors minus one. The number of designees who are not independent directors that Platinum is entitled to nominate decreases from four to one, and such director's voting power decreases to one vote, if Platinum beneficially owns less than 30% but more than 4.5% of the Common Stock. All such rights to designate nominees, including independent directors, shall cease if Platinum fails to beneficially own more than 4.5% of the Common Stock.

The Amended and Restated Stockholders' Agreement further provides that (i) each of Blackstone and ECP will have the right to designate one nominee for the election to the Board so long as such investor beneficially owns at least 4.5% of the Common Stock, (ii) Capitol will have the right to designate one nominee for the election to the Board so long as it beneficially owns at least 50% the Common Stock it holds as of the Closing Date and (iii) the chief executive officer of the Company shall hold a seat on the Board.

While Platinum beneficially owns 30% or more of the Common Stock and is the largest stockholder in the Company, Platinum, in its capacity as stockholder, will have consent rights over the following actions of the Company or any of its subsidiaries:

- entering into or effecting a change in control;
- entering into agreements providing for the acquisition or divestiture of assets or equity security of any person, with aggregate consideration in excess of $50 million;

- entering into any joint venture or similar business alliance having a fair market value in excess of $50 million;
- any liquidation, dissolution, receivership, bankruptcy or other insolvency proceeding;
- any material change in the nature of the business;
- share repurchases, except for repurchases pursuant to a repurchase plan or certain repurchases from employees which are approved by the Board;
- declaration of dividends or reclassification of equity securities or securities convertible into equity securities;

- incurrence of indebtedness for borrowed money in an aggregate principal amount in excess of $50 million, other than borrowings under the existing revolving credit facility;
- granting of security interests or guaranties other than in the ordinary course;
- terminating or hiring chief executive officer, chief financial officer and chief operating officer;
- amendment of charter or bylaws;
- designation of any class of stock;
- any issuance of equity securities or rights to acquire equity securities, other than equity issued pursuant to employee equity plans that shall have been approved by the Board;
- establishment or change of employee incentive plans;
- changes to accounting policies, other than required in accordance with GAAP, and any material tax elections;
- hiring or terminating of principal outside counsel or auditor; and
- entering into any contracts not specifically listed above involving aggregate payments to or by the Company in excess of $50 million per annum.

Pursuant to the terms of the Amended and Restated Stockholders' Agreement, certain shares of Common Stock held by ECP and Capitol continue to be designated "Earnout Shares" and such Earnout Shares are subject to restrictions on (i) transfer of such shares of Common Stock and (ii) forfeiture of such shares of Common Stock tied to both time and performance that the other shares of Common Stock are not subject to.

If, at any time while Platinum beneficially owns more than 50% of the Common Stock, Platinum receives a bona fide offer from a third party to purchase or otherwise desires to transfer shares of Common Stock to a third party on arm's length terms including shares of Common Stock owned by Blackstone, ECP, Capitol or certain members of management of the Company (the "**Drag Shares**"), and (i) such sale proposal, if consummated, would result in a change in control of the Company (taking into account all Drag Shares), (ii) such sale proposal does not involve the transfer of Drag Shares to Platinum or an affiliate of Platinum and (iii) in such sale proposal, if consummated, Platinum would receive the same form of consideration as the other stockholders in the Company (a "**Required Sale**"), then Platinum may deliver a written notice with respect to such Sale Proposal at least ten business days prior to the anticipated closing date of such Required Sale to Blackstone, ECP, Capitol and the applicable members of the Company's management requiring them to sell or otherwise transfer their shares of Common Stock to the proposed transferee.

For a period of 18 months following the Closing Date (the "**Lockup Period**"), Platinum may not transfer any of its shares of Common Stock other than pursuant to the following exceptions:

- in the context of customary permitted transfers;
- upon unanimous approval by the Board;

- upon approval by each of Blackstone and ECP (each, while it owns 5% or more of Common Stock, and in such capacity a "**Qualifying Shareholder**"); or
- in the context of a transaction that results in a price of $8.00 per share or more (the "**Trigger Price**").

In addition, during the Lockup Period, Platinum shall not vote any of its shares of Common Stock for any change of control transaction (which shall include any take-private transaction involving Platinum) other than pursuant to the following exceptions:

- with the consent of the Qualifying Shareholders;
- upon unanimous approval by the Board; or
- in the context of a transaction at or above the Trigger Price, provided that the consideration received by Blackstone, ECP and Capitol consists of either cash or publicly traded securities.

In the event of one or multiple follow-on offerings that close at or above the Trigger Price during the Lockup Period, for the first $200 million of aggregate proceeds sold (the "**First Tranche**"), each Qualifying Shareholder, alongside Platinum, shall have the right to sell up to one third of the First Tranche (Platinum and each Qualifying Shareholder may sell proportionally more to the extent a Qualifying Shareholder doesn't participate in such transaction up to a third). Capitol will have the right to participate alongside ECP (on a pro rata basis) within ECP's allocable portion of the First Tranche. For any amount raised at or above the Trigger Price in addition to the First Tranche during the Lockup Period, Platinum, Capitol and each Qualifying Shareholder shall participate on a pro rata basis.

Any acquisition proposal by Platinum (or an affiliate thereof) or any acquisition in which Platinum does not receive the same form of consideration as the other stockholders of the Company will, in each case, require approval by both (i) a majority of the disinterested directors or a special committee of independent directors and (ii) while ECP owns 5% or more of the shares of Common Stock on a fully diluted basis (calculated using the treasury stock method), a majority of the Company's stockholders that are independent of Platinum and otherwise disinterested.

Platinum, ECP, Capitol and Blackstone will be granted certain rights to have registered, in certain circumstances, the resale under the Securities Act of the shares of Common Stock held by them, subject to certain conditions set forth therein.

The Company agreed to certain indemnification rights for the benefit of Platinum, ECP, Capitol, Blackstone and certain of their representatives and affiliates in connection with their purchase or ownership of Company equity interests or their involvement in litigation in their capacity as a stockholder of the Company (or as a representative or affiliate of any of Platinum, ECP, Capitol or Blackstone, as the case may be).

The foregoing description of the Amended and Restated Stockholders' Agreement does not purport to be complete, and is qualified in its entirety by reference to the full text of the Stockholders' Agreement, which is filed herewith as Exhibit 10.5 and is incorporated herein by reference.

Corporate Advisory Services Agreement

On the Closing Date, the Company and Platinum Equity Advisors, LLC, an affiliate of Platinum, entered into a Corporate Advisory Services Agreement (the "**Corporate Advisory Services Agreement**"), pursuant to which, among other things, Platinum Equity Advisors, LLC will provide certain transactional and corporate advisory services to the Company and the Company will pay to Platinum Equity Advisors, LLC an advisory fee of $5 million per each of the calendar years 2021 through 2023 (pro-rated for calendar year 2021), $2.5 million for calendar year 2024 and $1.25 million per annum for each calendar year thereafter.

The foregoing description of the Corporate Advisory Services Agreement is qualified in its entirety by reference to the full text of the Corporate Advisory Services Agreement, which is filed herewith as Exhibit 10.6 and is incorporated herein by reference.

Indemnification Agreements

On the Closing Date, the Board approved a form of indemnification agreement to be entered into by the Company with each of its directors and executive officers (the "**Form Indemnification Agreement**"). The Form Indemnification Agreement requires the Company to indemnify each director and officer under the circumstances and to the extent provided for therein, to the fullest extent permitted by the General Corporation Law of the State of Delaware, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or officer in any action or proceeding arising out of the person's service as a director or officer.

The foregoing description of the Form Indemnification Agreement is qualified in its entirety by reference to the full text of the Form Indemnification Agreement, which is filed herewith as Exhibit 10.7 and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth above under the heading "Introduction" and Item 1.01 above is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant.

The information set forth above under Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth above under the heading "Introduction" is incorporated herein by reference.

The issuance and sale in the Subscription, Rollovers and Supplemental Equity Financing are exempt from registration under the Securities Act, pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506(c) of Regulation D of the Securities Act. Platinum, each party to a Rollover Agreement and each PIPE Investor represented to the Company that it is an "accredited investor" as defined in Rule 501 of the Securities Act and that the Common Stock is being acquired for investment purposes and not with a view to, or for sale in connection with any distribution thereof, and appropriate legends will be affixed to any certificates evidencing the shares of Common Stock.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under the heading "Introduction" and in Item 5.03 below is incorporated herein by reference.

Item 5.01 Change in Control of Registrant.

As a result of the completion of the Subscription, a change in control of the Company occurred. Prior to the Closing Date, the Company was controlled by ECP and, on the Closing Date, the Company became controlled by Platinum. The information set forth above under the heading "Introduction" and in Items 1.01, 5.02 and 5.03 is incorporated herein by reference.

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

The information set forth above under the heading "Introduction" and Item 1.01 above is incorporated herein by reference.

Directors

In connection with the Acquisition and the Subscription, each of Rahman D'Argenio and Mark Ein resigned from the Board on the Closing Date immediately prior to the Closing, and each of the other directors of the Company prior to the Closing (Dyson Dryden, William Plummer, Jennifer Gray, Matt Himler, Gerard Holthaus, Lee Jacobson, Doug Kimmelman and Jeffrey Stoops) resigned from the Board on the Closing Date effective as of the Closing. Pursuant to the Investment Agreement and the Stockholders' Agreement, the size of the Board has been set at 11 directors and the Board has been reconstituted as of the Closing Date as follows:

Director	Class
Marshall Heinberg (Chairman)	Class B (Term Ending 2021 Annual Meeting)
Louis Samson	Class B (Term Ending 2021 Annual Meeting)
David Wolf	Class B (Term Ending 2021 Annual Meeting)
Bryan Kelln	Class C (Term Ending 2022 Annual Meeting)
Georgia Nelson	Class C (Term Ending 2022 Annual Meeting)
John-Paul (JP) Munfa	Class C (Term Ending 2022 Annual Meeting)
Fred Ross	Class C (Term Ending 2022 Annual Meeting)
David Glatt	Class A (Term Ending 2023 Annual Meeting)
Paul Bader	Class A (Term Ending 2023 Annual Meeting)
Rahman D'Argenio	Class A (Term Ending 2023 Annual Meeting)

In connection with the foregoing, Messrs. Heinberg and Bader and Ms. Nelson were appointed as members of the Audit Committee of the Board, and Messrs. Munfa, Wolf and D'Argenio and Ms. Nelson were appointed as members of the Compensation Committee of the Board.

Also, on the Closing Date, the Board approved compensation for certain of the members of the Board. Each of Messrs. Bader, Munfa, D'Argenio and Ein and Ms. Nelson will receive annual cash compensation of $100,000 and a restricted stock unit grant valued at $125,000. Mr. Heinberg, as Chairman of the Board, will receive annual cash compensation of $200,000 and a restricted stock unit grant valued at $225,000.

Officers

In connection with the Acquisition, the previously announced appointments of Fred Ross as Chief Executive Officer of the Company, Ryan McMonagle as President and Chief Operating Officer of the Company and Bradley Meader as Chief Financial Officer of the Company became effective on the Closing Date.

Also, as previously announced, Lee Jacobson ceased to serve as the Chief Executive Officer of the Company, Robert Blackadar ceased to serve as the President of the Company, Kevin Kapelke ceased to serve as the Chief Operating Officer of the Company and Joshua Boone ceased to serve as the Chief Financial Officer of the Company, each effective as of the Closing Date.

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

Amended and Restated Certificate of Incorporation

On the Closing Date, in connection with the Closing, the Company amended and restated its current amended and restated its certificate of incorporation (such amended and restated certificate of incorporation, the "**Amended and Restated Charter**") to, among other things, (i) increase the number of authorized shares of Common Stock to facilitate the Subscription, (ii) provide that Platinum shall have the right to call special meetings of the Company's stockholders for so long as Platinum maintains the right to designate one nominee to the Board and (iii) provide that the stockholders of the Company can only act by written consent for any action which may be taken at a special or annual meeting of the Company's stockholders for so long as Platinum holds at least 50% of the Common Stock. Also on the Closing Date, the Company further amended the Amended and Restated Charter to change the name of the Company from "Nesco Holdings, Inc." to "Custom Truck One Source, Inc." (the "**Charter Amendment**"). Thereafter, on the Closing Date, the Company filed a Restated Certificate of Incorporation of the Company (the "**Restated Charter**") with the Delaware Secretary of State which reflects the foregoing.

The foregoing descriptions of the Amended and Restated Charter, Charter Amendment and Restated Charter do not purport to be complete, and are qualified in their entirety by reference to the full text of the Restated Charter, which is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

Amended and Restated Bylaws

On the Closing Date, in connection with the Closing, the Company adopted amended and restated bylaws (the "**Amended and Restated Bylaws**") to, among other things, provide that (i) the name of the Company is "Custom Truck One Source, Inc.", (ii) any two directors or the chairperson may call special meetings of the Board, (iii) a quorum of the Board shall require the presence of at least a majority of the non-independent directors nominated by Platinum, for so long as Platinum maintains the right to designate a nominee to the Board, and (iv) the Board shall establish an operating council responsible for day-to-day oversight of the business of the Company.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete, and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, which are filed herewith as Exhibit 3.2 and are incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

As previously announced, immediately following the Closing, the Company changed its name to Custom Truck One Source, Inc. The NYSE ticker symbol of the Common Stock will change from "NSCO" to "CTOS" and the ticker symbol of the Company's redeemable warrants will change from "NSCO.WS" to "CTOS.WS" each effective April 5, 2021.

On April 1, 2021, the Company issued a press release announcing the Closing. The full text of the press release is attached as Exhibit 99.1 to this Current Report and is incorporated by reference herein.

The information set forth in this Item 7.01, including Exhibit 99.1, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section. The information in this Item 7.01, including Exhibit 99.1, shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

The financial statements required by Item 9.01(a) of Form 8-K and the pro forma financial information required by Item 9.01(b) of Form 8-K are not included in this Current Report on Form 8-K. The financial statements and pro forma financial information will be filed by an amendment to this Current Report on Form 8-K within the time period specified in the instructions to Item 9.01 of Form 8-K.

(d) Exhibits:

Exhibit No.	Description
2.1*	Purchase and Sale Agreement, dated as of December 3, 2020, by and among Blackstone Energy Partners NQ L.P., Blackstone Energy Family Investment Partnership SMD L.P., Blackstone Energy Family Investment Partnership NQ ESC L.P., Blackstone Capital Partners VI-NQ L.P., Blackstone Family Investment Partnership VI-NQ ESC L.P., Fred M. Ross, Jr. Irrevocable Trust, BEP UOS Feeder Holdco L.P., BCP VI UOS Feeder Holdco L.P., Blackstone Energy Management Associates NQ L.L.C., Blackstone Management Associates VI-NQ L.L.C., Nesco Holdings II, Inc., Nesco Holdings, Inc., Blackstone Capital Partners VI-NQ L.P., solely in its capacity as the representative of Sellers, and PE One source Holdings, LLC, solely with respect to Section 9.04 (Incorporated by reference to Exhibit 2.1 of the Company's Current Report on Form 8-K filed on December 4, 2020)
3.1	Restated Certificate of Incorporation of the Company
3.2	Amended and Restated Bylaws of the Company
4.1	Indenture, dated as of April 1, 2021, by and among Nesco Holdings II, Inc., Wilmington Trust, National Association, as Trustee and Collateral Agent, and the Guarantors party thereto from time to time
4.2	Form of 5.50% Senior Note due 2029 (included in Exhibit 4.1 hereto)
10.1	Form of Rollover and Contribution Agreement (Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed on December 4, 2020)
10.2*	Common Stock Purchase Agreement, dated as of December 3, 2020, by and between Nesco Holdings, Inc. and PE One Source Holdings, LLC (Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K filed on December 4, 2020)
10.3*	Revolving Credit Agreement, dated as of April 1, 2021, by and among Capitol Investment Merger Sub 2, LLC, NESCO Holdings II, Inc., the various lenders and issuing banks party thereto and Bank of America, N.A., as administrative agent, collateral agent and swingline lender
10.4	Registration Rights Agreement, dated as of April 1, 2021, between Custom Truck One Source, Inc. and certain holders identified therein
10.5*	Amended and Restated Stockholders' Agreement, dated as of April 1, 2021, among Custom Truck One Source, Inc. and certain holders identified therein
10.6	Corporate Advisory Services Agreement, dated as of April 1, 2021, between Custom Truck One Source, Inc. and Platinum Equity Advisors, LLC
10.7	Form Indemnification Agreement
99.1	Press Release, dated April 1, 2021
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

* Schedules and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish a supplemental copy of any omitted schedule or attachment to the SEC upon request.

SIGNATURE

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

Date: April 2, 2021

Custom Truck One Source, Inc.

/s/ Bradley Meader

Bradley Meader
Chief Financial Officer

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION OF
CUSTOM TRUCK ONE SOURCE, INC.

Pursuant to Section 245
of the General Corporation Law of the State of Delaware

Custom Truck One Source, Inc. a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The present name of the corporation is Custom Truck One Source, Inc.

2. The corporation was incorporated under the name "Nesco Holdings, Inc." by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on July 30, 2019.

3. This Restated Certificate of Incorporation of the Corporation only restates and integrates and does not further amend the provisions of the corporation's Certificate of Incorporation as heretofore amended or supplemented and there is no discrepancy between the provisions of the Certificate of Incorporation as heretofore amended and supplemented and the provisions of this Restated Certificate of Incorporation.

4. This Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware.

5. The Certificate of Incorporation of the corporation is hereby integrated and restated to read in its entirety as follows:

FIRST: The name of the corporation is Custom Truck One Source, Inc. (hereinafter sometimes referred to as the "Corporation").

SECOND: The registered office of the Corporation is to be located at 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as it now exists or may hereafter be amended and supplemented ("DGCL").

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 510,000,000 of which 500,000,000 shares shall be Common Stock, par value $0.0001 per share (the "Common Stock"), and 10,000,000 shares shall be Preferred Stock par value $0.0001 per share (the "Preferred Stock"). The designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation are as follows:

A. Preferred Stock. The Board of Directors of the Corporation (the "Board of Directors") is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights and such qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law. The number of authorized shares of the Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

B. Common Stock.

1. General. The voting, dividend, liquidation, conversion and stock split rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held by such holder. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation (as in effect at the time in question) (the "Bylaws") and applicable law on all matters put to a vote of the stockholders of the Corporation.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

3. Dividends. Subject to the rights of any holders of any shares of Preferred Stock which may from time to time come into existence and be outstanding, the holders of Common Stock shall be entitled to the payment of dividends when and as declared by the Board of Directors in accordance with applicable law and to receive other distributions from the Corporation. Any dividends declared by the Board of Directors to the holders of the then outstanding shares of Common Stock shall be paid to the holders thereof pro rata in accordance with the number of shares of Common Stock held by each such holder as of the record date of such dividend.

4. Liquidation. Subject to the rights of any holders of any shares of Preferred Stock which may from time to time come into existence and be outstanding, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding shares of Common Stock pro rata in accordance with the number of shares of Common Stock held by each such holder.

FIFTH:

1. The provisions of this Article Fifth shall be subject to the terms of that certain Stockholders Agreement, dated as of April 1, 2021 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Stockholders Agreement"), by and among the Corporation, an affiliate of Platinum Equity Advisors, LLC ("Platinum"), an affiliate of Blackstone Management Partners L.L.C. ("Blackstone"), ECP (as defined below), Capitol (as defined below) and the Management Holders (as defined therein) and the rights of the holders of any outstanding shares of Preferred Stock. The Board of Directors (other than directors elected by holders of Preferred Stock voting separately) shall be divided into three classes: Class A, Class B and Class C. The number of directors in each class shall be as nearly equal as possible. The directors in Class A shall be elected for a term expiring at the 2020 Annual Meeting of Stockholders, the directors in Class B shall be elected for a term expiring at the 2021 Annual Meeting of Stockholders and the directors in Class C shall be elected for a term expiring at the 2022 Annual Meeting of Stockholders. Commencing at the first Annual Meeting of Stockholders, and at each annual meeting thereafter, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Except as the DGCL may otherwise require, in the interim between annual meetings of stockholders or special meetings of stockholders called for the election of directors and/or the removal of one or more directors and the filling of any vacancy in connection therewith, newly created directorships and any vacancies in the Board of Directors, including unfilled vacancies resulting from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum (as defined in the Bylaws), or by the sole remaining director. All directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified. A director elected to fill a vacancy resulting from the death, resignation or removal of a director shall serve for the remainder of the full term of the director whose death, resignation or removal shall have created such vacancy and until his successor shall have been elected and qualified.

2. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (a) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the

additional directors so provided for or fixed pursuant to said provisions, and (b) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, retirement, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director shall thereupon cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall be reduced accordingly.

SIXTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. Election of directors need not be by ballot unless the Bylaws so provide.

B. In furtherance and not in limitation of the rights, power, privileges and discretionary authority granted or conferred by the DGCL or other statutes or laws of the State of Delaware, and subject to the rights granted pursuant to the Stockholders Agreement, the Board of Directors shall have the power, without the assent or vote of the stockholders, to make, alter, amend, change, add to or repeal the Bylaws as provided in the Bylaws. The Corporation may in its Bylaws confer powers upon its Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

C. The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the Corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided, however, that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and binding upon the Corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the Corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interests, or for any other reason.

D. In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of the State of Delaware, of this Certificate of Incorporation, and to the Bylaws; provided, however, that no bylaw shall invalidate any prior act of the directors which was valid prior to such bylaw having been made.

E. At any time when Platinum and its affiliates collectively beneficially own, in the aggregate, at least 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand, overnight courier or by certified or registered mail, return receipt requested. At any time when the ownership thresholds of the first sentence of this paragraph are not fulfilled, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; provided, however, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

F. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time only by or at the direction of the Board of Directors or the Chairman of the Board of Directors and, at any time when Platinum and its affiliates collectively beneficially own, in the aggregate, at least 5% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, the Chairman of the Board of Directors shall call such meeting at the request of Platinum from time to time.

SEVENTH:

A. The personal liability of the directors of the Corporation to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as director is hereby eliminated to the fullest extent permitted by the DGCL. Any amendment, repeal or modification of this Article Seventh, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article Seventh, shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such amendment, repeal or modification. If the DGCL is amended after approval by the stockholders of this Article Seventh to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

B. The Corporation, to the full extent permitted by Section 145 of the DGCL, shall indemnify, advance expenses and hold harmless all persons whom it may indemnify pursuant thereto. The Corporation may, by action of the Board of Directors, provide rights to indemnification and to advancement of expenses to such other employees or agents of the Corporation or its subsidiaries to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the DGCL. Expenses (including attorneys' fees) incurred by an officer or director of the Corporation in defending any civil, criminal, administrative, or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized hereby. Any amendment, repeal or modification of this Article Seventh shall not adversely affect any rights or protection existing hereunder immediately prior to such repeal or modification.

C. Without limiting the generality of the foregoing, the Corporation hereby acknowledges that the directors designated by Platinum, Blackstone, ECP or Capitol pursuant to Section 1.1 of the Stockholders Agreement may have certain rights to indemnification, advancement of expenses and/or insurance provided by Platinum, Blackstone, ECP or Capitol, as applicable, and certain of their respective affiliates (collectively, the "Fund Indemnitors"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such persons are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such persons are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Amended and Restated Certificate of Incorporation or the Bylaws of (or any other agreement between the Corporation and such persons), without regard to any rights such persons may have against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Fund Indemnitors on behalf of such persons with respect to any claim for which such persons have sought indemnification from the Corporation shall affect the foregoing and the Fund Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such persons against the Corporation. The Corporation and each such person agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Article Seventh.

EIGHTH:

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws (as either may be amended from time to time) or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case, subject to said Court of Chancery (or the federal district court

for the District of Delaware or other state court of the State of Delaware, as applicable) having personal jurisdiction over the indispensable parties named as defendants therein. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the federal securities laws of the United States.

B. If any provision or provisions of this Article Eighth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Eighth (including, without limitation, each portion of any sentence of this Article Eighth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Eighth.

NINTH: In addition to any vote or consent required under the Stockholders Agreement, from time to time any of the provisions of this Certificate of Incorporation may be amended, altered, changed or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article Ninth.

TENTH:

A. Corporate Opportunity - Scope. The provisions of this Article Tenth are set forth to define, to the extent permitted by applicable law, the duties of Exempted Persons (as defined below) to the Corporation with respect to certain classes or categories of business opportunities. "Exempted Persons" means (i) Energy Capital Partners, LLC, a Delaware limited liability company, Energy Capital Partners II, LLC, a Delaware limited liability company, Energy Capital Partners III, LLC, a Delaware limited liability company, Energy Capital Partners Mezzanine, LLC, a Delaware limited liability company, Energy Capital Partners IV, LLC, a Delaware limited liability company, Energy Capital Partners Credit Solutions II, LLC, a Delaware limited liability company, ECP ControlCo, LLC, a Delaware limited liability company, Energy Capital Partners Holdings, LP, a Delaware limited partnership, ECP Feeder, LP, a Delaware limited partnership and ECP Management GP, LLC, a Delaware limited liability company (collectively, "ECP"), and their affiliates (including, but not limited to, any entity that, directly or indirectly, controls, is controlled by or is under common control with ECP), successors, directly or indirectly managed funds or vehicles, partners, principals, directors, officers, members, managers and employees, including any of the foregoing who serve as officers or directors of the Corporation, (ii) Capitol Acquisition Management IV LLC, a Delaware limited liability company, Capitol Acquisition Founder IV LLC, a Delaware limited liability company (collectively, "Capitol"), Mark Ein, L. Dyson Dryden, William Plummer and Jeff Stoops and each of their respective affiliates, successors, partners, principals, directors, officers, members, managers and employees, including any of the foregoing who serve as officers or directors of the Corporation, (iii) Platinum and its affiliates (including, but not limited to, any entity that, directly or indirectly, controls, is controlled by or is under common control with Platinum), successors, directly or indirectly managed funds or vehicles, partners, principals, directors, officers, members, managers and employees of Platinum or any of the foregoing, including any of the foregoing who serve as officers or directors of the Corporation and (iv) Blackstone and its affiliates (including, but not limited to, any entity that, directly or indirectly, controls, is controlled by or is under common control with Blackstone), successors, directly or indirectly managed funds or vehicles and partners, principals, directors, officers, members, managers and employees of Blackstone or any of the foregoing, including any of the foregoing who serve as officers or directors of the Corporation; provided, however, that Exempted Persons shall not include the Corporation or any of its subsidiaries.

B. Competition and Allocation of Corporate Opportunities. To the fullest extent permitted by law, the Exempted Persons shall not have any fiduciary duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to

participate in, business opportunities that are from time to time presented to the Exempted Persons, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and each such Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Exempted Person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries; provided, however, that the foregoing waiver of corporate opportunities by the Corporation contained in this sentence shall not apply to any such corporate opportunity that is expressly and exclusively offered to a director or officer of the Corporation in his or her capacity as such.

C. Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article Tenth, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not financially or legally able or contractually permitted to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

D. Limitation of Director Liability. To the fullest extent permitted by law, no amendment or repeal of this Article Tenth in accordance with the provisions hereof shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware prior to such amendment or repeal. This Article Tenth shall not limit or eliminate any protections or defenses otherwise available to, or any rights to indemnification or advancement of expenses of, any director or officer of the Corporation under this Certificate of Incorporation, the Bylaws, any agreement between the Corporation and such officer or director, or any applicable law.

E. Deemed Notice. Any person or entity purchasing, holding or otherwise acquiring any interest in any shares of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article Tenth.

ELEVENTH:

A. The Corporation expressly elects not to be governed by Section 203 of the DGCL.

B. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

1. prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder,

2. upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

3. at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 ⅔% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

C. For purposes of this Article Eleventh, references to:

1. "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

2. "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

3. "Permitted Direct Transferee" means any person that acquires (other than in a registered public offering or through a broker's transaction executed on any securities exchange or other over-the-counter market) directly from any of Platinum, Blackstone, ECP, Capitol or any of their respective affiliates or successors or any "group," or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 5% or more of the then-outstanding voting stock of the Corporation.

4. "Permitted Indirect Transferee" means any person that acquires (other than in a registered public offering or through a broker's transaction executed on any securities exchange or other over-the-counter market) directly from any Permitted Direct Transferee or any other Permitted Indirect Transferee beneficial ownership of 5% or more of the then-outstanding voting stock of the Corporation.

5. "business combination," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section (B) of this Article Eleventh is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this subsection (3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (1)-(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

6. "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article Eleventh, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

7. "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the affiliates and associates of such person; but "interested stockholder" shall not include or be deemed to include, in any case, (a) Platinum, ECP, Capitol, Blackstone, any Permitted Direct Transferee, any Permitted Indirect Transferee or any of their respective affiliates or successors or any "group," or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation, provided, however, that such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

8. "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(1) beneficially owns such stock, directly or indirectly;

(2) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

9. "person" means any individual, corporation, partnership, unincorporated association or other entity.

10. "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

11. "voting stock" means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

TWELFTH: For as long as the Stockholders Agreement remains in effect, in the event of any conflict between the terms and provisions of this Certificate of Incorporation and those contained in the Stockholders Agreement, the terms of the Stockholders Agreement shall be incorporated by reference into the relevant provisions hereof (which provisions hereof shall be interpreted and applied in a manner consistent with the terms of the Stockholders Agreement) and shall govern and control, except as provided otherwise by mandatory provisions of the DGCL.

[*Signature Page Follows*]

IN WITNESS WHEREOF, Custom Truck One Source, Inc. has caused this Restated Certificate of Incorporation to be executed by its duly authorized officer as of this first day of April, 2021.

CUSTOM TRUCK ONE SOURCE, INC.

By: /s/ R. Todd Barrett
Name: R. Todd Barrett
Title: Chief Accounting Officer

Exhibit 3.2

Bylaws of

Custom Truck One Source, Inc.

(a Delaware corporation)

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Bylaws of

Custom Truck One Source, Inc.

Article I - Corporate Offices

1.1 Registered Office.

The address of the registered office of Custom Truck One Source, Inc. (the "Corporation") in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (the "Certificate of Incorporation").

1.2 Other Offices.

The Corporation may have additional offices at any place or places, within or outside the State of Delaware, as the Corporation's board of directors (the "Board") may from time to time establish or as the business of the Corporation may require.

Article II - Meetings of Stockholders

2.1 Place of Meetings.

Meetings of stockholders shall be held at such place, if any, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 Annual Meeting.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 may be transacted.

2.3 Special Meeting.

(i) Special meetings of the stockholders may only be called in the manner provided in the Certificate of Incorporation and may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board or the chairperson of the Board shall determine and state in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board or the chairperson of the Board; provided, however, that with respect to any special meeting of stockholders previously scheduled by the Board or the chairperson of the Board at the request of Platinum (as defined in the Certificate of Incorporation, "Platinum"), the Board shall not postpone, reschedule or cancel such special meeting without the prior written consent of Platinum.

(ii) Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) as provided in the Stockholders Agreement (as defined in the Certificate of Incorporation, the "Stockholders Agreement"), or (b) by or at the direction of the Board or any committee thereof.

(iii) No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting.

2.4 Advance Notice Procedures for Business Brought before a Meeting.

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in a notice of meeting given by or at the direction of the Board, (b) if not specified in a notice of meeting, otherwise brought before the meeting by the Board or the chairperson of the meeting, or (c) otherwise properly brought before the meeting by a stockholder present in Person who (A)(1) was a stockholder of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.4 or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), which proposal has been included in the proxy statement for the annual meeting. The foregoing clause (c) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. The only matters that may be brought before a special meeting are the matters specified in the Corporation's notice of meeting given by or at the direction of the Person calling the meeting pursuant to the Certificate of Incorporation and Section 2.3. For purposes of this Section 2.4 and Section 2.5, "present in Person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, appear at such annual meeting, and a "qualified representative" of such proposing stockholder shall be, if such proposing stockholder is (x) a general or limited partnership, any general partner or Person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (y) a corporation or a limited liability company, any officer or Person who functions as an officer of the corporation or limited liability company or any officer, director, general partner or Person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (z) a trust, any trustee of such trust. This Section 2.4 shall apply to any business that may be brought before an annual or special meeting of stockholders other than nominations for election to the Board at an annual meeting, which shall be governed by Section 2.5. Stockholders seeking to nominate Persons for election to the Board must comply with Section 2.5, and this Section 2.4 shall not be applicable to nominations for election to the Board except as expressly provided in Section 2.5.

(ii) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (a) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (b) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the one-year anniversary of the preceding year's annual meeting; *provided, however*, that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the day occurring 90 days prior to such annual meeting or, if later, the tenth day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(iii) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the Secretary shall set forth:

(a) As to each Proposing Person (as defined below), (1) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records) and (2) the number of shares of each class or series of stock of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that

such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (1) and (2) are referred to as "Stockholder Information");

(b) As to each Proposing Person, (1) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of stock of the Corporation; *provided* that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided*, *further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (2) any rights to dividends on the shares of any class or series of stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (3) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (4) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (5) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (6) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (1) through (6) are referred to as "Disclosable Interests"); *provided*, *however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(c) As to each item of business that the stockholder proposes to bring before the annual meeting, (1) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration), (3) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other Person or entity (including their names) in connection with the proposal of such business by such stockholder and (4) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act.

(iv) For purposes of this Section 2.4, the term "Proposing Person" shall mean (a) the stockholder providing the notice of business proposed to be brought before an annual meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made or (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(v) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive office of the Corporation not later than five business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof).

(v) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(vi) In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(vii) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

2.5 Advance Notice Procedures for Nominations of Directors.

(i) Nominations of any Person for election to the Board at an annual meeting may be made at such meeting only (a) as provided in the Stockholders Agreement, (b) subject to the Stockholders Agreement, by or at the direction of the Board, including by any committee or Persons authorized to do so by the Board or these bylaws, or (c) by a stockholder present in Person (as defined in Section 2.4) (1) who was a beneficial owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.5 as to such notice and nomination. Except as provided otherwise in the Stockholders Agreement, the foregoing clause (c) shall be the exclusive means for a stockholder to make any nomination of a Person or Persons for election to the Board at any annual meeting of stockholders.

(ii) Without qualification, for a stockholder to make any nomination of a Person or Persons for election to the Board at an annual meeting, the stockholder must (a) provide Timely Notice (as defined in Section 2.4(ii); *provided that* if such nominating stockholder is Platinum, then for purposes of such definition each reference to "90 days" in Section 2.4(ii) shall be replaced by "45 days") thereof in writing and in proper form to the Secretary of the Corporation; *provided further*, *that* the Company shall identify to Platinum in writing all such Board nominees for such meeting on or before such 45th day and promptly following any change therein (other than any change in a nomination previously made by Platinum) such that for a period of ten (10) days following each such notice of change, Platinum shall be exempt from any advance notice limitations with respect to, and shall be permitted, further nominations in its capacity as a stockholder for such meeting, (b) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5, and (c) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(iii) To be in proper form for purposes of this Section 2.5, except in the case of clauses (a) and (b) where the nominating stockholder is Platinum, a stockholder's notice to the Secretary shall set forth:

(a) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(iii)(a)), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(a);

(b) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(iii)(b), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(b) and the disclosure with respect to the business to be brought before the meeting in Section 2.4(iii)(c) shall be made with respect to nomination of each Person for election as a director at the meeting); and

(c) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (1) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 if such candidate for nomination were a Nominating Person, (2) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (3) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (1) through (3) are referred to as "Nominee Information"), and (4) a completed and signed questionnaire, representation and agreement as provided in Section 2.5(vi).

(iv) For purposes of this Section 2.5, the term "Nominating Person" shall mean (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, or (c) any other participant in such solicitation.

(v) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof).

(v) To be eligible to be a candidate for election as a director of the Corporation at an annual meeting, a candidate must be nominated in the manner prescribed in this Section 2.5 and the candidate for nomination, whether nominated by the Board or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board), to the Secretary at the principal executive offices of the Corporation, a completed written questionnaire (in the form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such candidate for nomination.

(vi) Except with respect to a candidate nominated by Platinum, the Board may also require a proposed candidate for nomination as a director to furnish such other information as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines.

(vii) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(viii) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with this Section 2.5, as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.5, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots case for the nominee in question) shall be void and of no force or effect; provided that in the case where the Nominating Person is Platinum, such determination must be made and declared in writing to Platinum (including such detail as would permit Platinum to remedy any such defects) within two business days following the receipt of the applicable notice of nomination provided for in Section 2.5(ii) and the Corporation shall use it best efforts to cooperate with and assist Platinum in promptly and timely remedying any such defects.

(ix) Notwithstanding anything in these Bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with this Section 2.5.

2.6 Exemption of Certain Stockholders.

Subject to this Article II, at any time when a Stockholder (as defined in the Stockholders Agreement) has the right to designate one or more directors to the Board in accordance with the Stockholders Agreement, regardless whether the Corporation is under an obligation or elects to nominate such director pursuant to the Stockholders Agreement, nothing contained in the Stockholders Agreement or elsewhere in these Bylaws shall be deemed to, and the Company shall take no action that would, nor omit to take any action where such omission would, in whole or in part, directly or indirectly, limit, impair, delay or prevent such Stockholder from making any additional nomination(s), unless and only to the extent expressly prohibited by the Stockholders Agreement.

2.7 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with either Section 2.8 or Section 8.1 not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in Person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.8 Manner of Giving Notice; Affidavit of Notice.

Notice of any meeting of stockholders shall be deemed given:

(i) if mailed, when deposited in the U.S. mail, postage prepaid, directed to the stockholder at his or her address as it appears on the Corporation's records; or

(ii) if electronically transmitted as provided in Section 8.1.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.9 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote, present in Person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in Person, or by remote communication, if applicable, or represented by proxy, shall have power to adjourn the meeting from time to time in the manner provided in Section 2.10 until a quorum is present or represented.

2.10 Adjourned Meeting; Notice.

When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in Person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

2.11 Conduct of Business.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the Person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other Persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.12 Voting.

Except as may be otherwise provided in the Certificate of Incorporation, these bylaws or the DGCL, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by the Certificate of Incorporation, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority of the votes cast (excluding abstentions and broker non-votes) on such matter.

2.13 Record Date for Stockholder Meetings and Other Purposes.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 days nor less than ten days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.14 Proxies.

Each stockholder entitled to vote at a meeting of stockholders may authorize another Person or Persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but, no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of a telegram, cablegram or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other means of electronic transmission was authorized by the stockholder.

2.15 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.15 or to vote in Person or by proxy at any meeting of stockholders.

2.16 Inspectors of Election.

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Corporation may designate one or more Persons as alternate inspectors to replace any inspector who fails to act. If any Person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the chairperson of the meeting shall appoint a Person to fill that vacancy.

Such inspectors shall:

(i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;

(ii) count all votes or ballots;

(iii) count and tabulate all votes;

(iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and

(v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspectors of election may appoint such Persons to assist them in performing their duties as they determine.

2.17 Consent of Stockholders in Lieu of a Meeting.

Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation and in accordance with applicable law.

Article III - Directors

3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

3.2 Number of Directors.

Subject to the Stockholders Agreement and the Certificate of Incorporation, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors.

Except as provided in Section 3.4, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

3.4 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, subject to the Stockholders Agreement, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the Stockholders Agreement, the Certificate of Incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director appointed in accordance with the preceding sentence shall hold office for the remainder of the term of the class, if any, to which the director is appointed and until such director's successor shall have been elected and qualified. A vacancy on the Board shall be deemed to exist under these bylaws in the case of the death, removal or resignation of any director.

3.5 Place of Meetings; Meetings by Telephone.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in Person at the meeting.

3.6 Regular Meetings.

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

3.7 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer or any two members of the Board.

Notice of the time and place of special meetings shall be:

(i) delivered Personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile or electronic mail; or

(iv) sent by other means of electronic transmission,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, or other address for electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (a) delivered Personally by hand, by courier or by telephone, (b) sent by facsimile or electronic mail, or (c) sent by other means of electronic transmission, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least four days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 Quorum.

At all meetings of the Board, a majority of the total number of directors shall constitute a quorum for the transaction of business; provided, however, that while Platinum has the right to nominate at least one director to the Board in accordance with the Stockholders Agreement, a quorum of the Board shall require the presence of at least the majority of the Platinum Directors (as defined in the Stockholders Agreement, the "Platinum Directors"), provided further, however, that if a Board meeting is rescheduled twice (no such Board meeting may be rescheduled within any 24 hour period) because the majority of the Platinum Directors is not present at each such Board meeting, the presence of the majority of the Platinum Directors shall no longer be required to establish a quorum. Any action to be taken by the Board by written consent shall require the signature of at least the majority of the Platinum Directors.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 Votes.

Subject to Section 1.1 of the Stockholders Agreement with respect to the Platinum Directors, each director shall have one vote.

3.10 Chairperson.

Subject to the Stockholders Agreement, the Board may elect a chairperson of the Board, who shall have the powers and perform such duties as provided in these bylaws and as the Board may from time to time prescribe. The chairperson shall preside at all meetings of the Board at which he or she is present. If the chairperson of the Board is not present at a meeting of the Board, a majority of the directors present at such meeting shall elect one of their members to preside.

3.11 Board Action by Written Consent without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.12 Fees and Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Article IV - Committees

4.1 Committees of Directors.

The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation, subject to the Stockholders Agreement. The Board, subject to the Stockholders Agreement, may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

4.2 Committee Minutes.

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (place of meetings and meetings by telephone);

(ii) Section 3.6 (regular meetings);

(iii) Section 3.7 (special meetings and notice);

(iv) Section 3.9 (action without a meeting); and

(v) Section 7.12 (waiver of notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However*:

(vi) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(vii) special meetings of committees may also be called by resolution of the Board or the chairperson of the applicable committee; and

(viii) the Board may adopt rules for the governance of any committee to override the provisions that would otherwise apply to the committee pursuant to this Section 4.3, provided that such rules do not violate the provisions of the Certificate of Incorporation or applicable law.

4.4 Operating Council

The Board has established an operating council (the "Operating Council"). The Operating Council is responsible for (i) the day-to-day oversight of the Corporation's and its subsidiaries' business (but cannot make decisions which would require Board approval), (ii) making recommendations to the Board for Board action and (iii) recommending the agenda for every meeting of the Board. Neither the Corporation nor the Board may dissolve the Operating Council while Platinum meets the Platinum Ownership Threshold (as defined in the Stockholders Agreement, the "Platinum Ownership Threshold") without Platinum's prior written consent.

While Platinum meets the Platinum Ownership Threshold, it shall have the right to nominate all of the members of the Operating Council, which members may be directors, officers or employees of the Corporation or any other Persons selected by Platinum; provided, however, that such members shall include the chairperson of the Board, the chief executive officer and the chief financial officer. While

any of Blackstone, Capitol and the NESCO Holder (each as defined in the Stockholders Agreement) has the right to designate one (1) director to the Board pursuant to the Stockholders Agreement and has so designated a director, it may designate an observer to the Operating Council and the Operating Council shall furnish to such observer at the same time provided to the Operating Council (i) notices of all meetings of the Operating Council, and (ii) copies of the materials with respect to all meetings of the Operating Council.

Article V - Officers

5.1 Officers.

The officers of the Corporation shall include a secretary. The Corporation may also have, at the discretion of the Board, a chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer, a treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same Person.

5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3.

5.3 Subordinate Officers.

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.2.

5.6 Representation of Shares of Other Corporations.

Subject to the consent rights granted under the Stockholders Agreement, the chairperson of the Board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this Corporation, or any other Person authorized by the Board, the chief executive officer, the president or a vice president, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority granted herein may be exercised either by such Person directly or by any other Person authorized to do so by proxy or power of attorney duly executed by such Person having the authority.

5.7 Authority and Duties of Officers.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

Article VI - Records

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with Section 224 of the DGCL shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code.

Article VII - General Matters

7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.2 Stock Certificates.

The shares of the Corporation shall be represented by certificates, provided that the Board may provide that some or all of the shares of any class or series of stock of the Corporation shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The chairperson or vice chairperson of the Board, the president, vice president, the treasurer, any assistant treasurer, the secretary or any assistant secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

7.3 Lost Certificates.

The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.4 Shares Without Certificates

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

7.5 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

7.6 Dividends.

The Board, subject to any restrictions contained in either (i) the DGCL, (ii) the Certificate of Incorporation and (iii) the Stockholders Agreement, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.7 Fiscal Year.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 Seal.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 Transfer of Stock.

Subject to the Stockholders Agreement, shares of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate Person or Persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the Persons from and to whom it was transferred.

7.10 Stock Transfer Agreements.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.11 Registered Stockholders.

The Corporation:

(i) shall be entitled to recognize the exclusive right of a Person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

7.12 Waiver of Notice.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the Person entitled to notice, or a waiver by electronic transmission by the Person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a Person at a meeting shall constitute a waiver of notice of such meeting, except when the Person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these bylaws.

Article VIII - Notice by Electronic Transmission

8.1 Notice by Electronic Transmission.

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if:

(i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent; and

(ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other Person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(iii) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(iv) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(v) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(vi) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

8.2 Definition of Electronic Transmission.

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Article IX - Indemnification

9.1 Indemnification of Directors and Officers.

The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she, or a Person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees, judgments, fines ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such Person in connection with any such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 9.4, the Corporation shall be required to indemnify a Person in connection with a Proceeding initiated by such Person only if the Proceeding was authorized in the specific case by the Board.

9.2 Indemnification of Others.

The Corporation shall have the power to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a Person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such Person in connection with any such Proceeding.

9.3 Prepayment of Expenses.

The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by any officer or director of the Corporation, and may pay the expenses incurred by any employee or agent of the Corporation, in defending any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Person to repay all amounts advanced if it should be ultimately determined that the Person is not entitled to be indemnified under this Article IX or otherwise.

9.4 Determination; Claim.

If a claim for indemnification (following the final disposition of such Proceeding) under this Article IX is not paid in full within 60 days, or a claim for advancement of expenses under this Article IX is not paid in full within 30 days, after a written claim therefor has been received by the Corporation the claimant may thereafter (but not before) file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

9.5 Non-Exclusivity of Rights.

The rights conferred on any Person by this Article IX shall not be exclusive of any other rights which such Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these bylaws, agreement (including the Stockholders Agreement), vote of stockholders or disinterested directors or otherwise.

9.6 Insurance.

The Corporation shall purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust enterprise or non-profit entity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.7 Other Indemnification.

The Corporation's obligation, if any, to indemnify or advance expenses to any Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

9.8 Continuation of Indemnification.

The rights to indemnification and to prepayment of expenses provided by, or granted pursuant to, this Article IX shall continue notwithstanding that the Person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such Person.

9.9 Amendment or Repeal; Interpretation.

The provisions of this Article IX shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a director or officer of the Corporation (whether before or after the adoption of these bylaws), in consideration of such Person's performance of such services, and pursuant to this Article IX the Corporation intends to be legally bound to each such current or former director or officer of the Corporation. With respect to current and former directors and officers of the Corporation, the rights conferred under this Article IX are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of theses bylaws. With respect to any directors or officers of the Corporation who commence service following adoption of these bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the Corporation. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection (i) hereunder of any Person in respect of any act or omission occurring prior to the time of such repeal or modification or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the Corporation in effect prior to the time of such repeal or modification.

Any reference to an officer of the Corporation in this Article IX shall be deemed to refer exclusively to the chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer, a treasurer appointed pursuant to Article V, and to any vice president, assistant secretary, assistant treasurer, or other officer of the Corporation appointed by (x) the Board pursuant to Article V or (y) an officer to whom the Board has delegated the power to appoint officers pursuant to Article V, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors (or equivalent governing body) of such other entity pursuant to the Certificate of Incorporation and bylaws (or equivalent organizational documents) of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The fact that any Person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise has been given or has used the title of "vice president" or any other title that could be construed to suggest or imply that such Person is or may be an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall not result in such Person being constituted as, or being deemed to be, an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for purposes of this Article IX.

Article X - Amendments

Subject to the Stockholders Agreement, the Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation.

Article XI - Definitions

As used in these bylaws, unless the context otherwise requires, the term:

"Affiliate" means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person. For the purposes of this definition, "control," when used with respect to any Person, means the power to direct or cause the direction of the affairs or management of that Person, whether through the ownership of voting securities, as trustee (or the power to appoint a trustee), Personal representative or executor, by contract, credit arrangement or otherwise and "controlled" and "controlling" have meanings correlative to the foregoing.

"Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

Article XII - Conflicts

For as long as the Stockholders Agreement remains in effect, in the event of any conflict between the terms and provisions of these bylaws and those contained in the Stockholders Agreement, the terms and provisions of the Stockholders Agreement shall govern and control, except as provided otherwise by mandatory provisions of the DGCL.

Custom Truck One Source, Inc.

Certification of Bylaws

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary of Custom Truck One Source, Inc.., a Delaware corporation (the "Corporation"), and that the foregoing bylaws were approved on April 1, 2021, effective as of April 1, 2021 by the Corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this first day of April, 2021.

/s/ Adam Haubenreich
Name: Adam Haubenreich
Title: Secretary

Exhibit 4.1

NESCO HOLDINGS II, INC.

and

the Guarantors from time to time party hereto

$920,000,000 5.500% SENIOR SECURED SECOND LIEN NOTES DUE 2029

INDENTURE

Dated as of April 1, 2021

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee and as Notes Collateral Agent

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EXHIBITS

INDENTURE dated as of April 1, 2021 among Capitol Investment Merger Sub 2, LLC, a Delaware limited liability company ("*Holdings*"), NESCO Holdings II, Inc., a Delaware corporation (the "*Issuer*"), the Guarantors (as defined herein) from time to time party hereto and Wilmington Trust, National Association, as trustee (in such capacity, the "*Trustee*") and as collateral agent (in such capacity, the "*Notes Collateral Agent*").

On the date hereof, the Notes (as defined below) are being issued in connection with the acquisition (the "*Acquisition*") by the Issuer of 100% of the issued and outstanding equity interests of Custom Truck One Source, L.P., a Delaware limited partnership ("*Custom Truck*"), and its Subsidiaries pursuant to a purchase and sale agreement, dated as of December 3, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "*Acquisition Agreement*"), by and among the Issuer, Nesco Holdings, Inc., a Delaware corporation, the CTOS Sellers (as defined therein), the BlockerCo Sellers (as defined therein), the Sellers' Representative (as defined therein) and the Investor (as defined therein).

The Issuer, the Guarantors, the Trustee and the Notes Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the 5.500% Senior Secured Second Lien Notes due 2029 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"*144A Global Note*" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"ABL Collateral Agent" means Bank of America, N.A. (including any of its Affiliates and branches), in its capacity as collateral agent for the lenders and the other secured parties under the ABL Credit Agreement and shall include its branch offices and affiliates in any applicable jurisdiction, together with its successors and permitted assigns under the ABL Credit Agreement.

"*ABL Credit Agreement*" means that certain credit agreement with respect to the asset-based revolving credit facility to be entered into on or about the Issue Date by and among the Issuer, Holdings, Bank of America, N.A., as administrative agent and as collateral agent, and the lenders, agents and other parties party thereto, and including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, and, in each case, as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder permitted under Section 4.09 hereof or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"*ABL Credit Parties*" means the Issuer, as borrower, and the other guarantors from time to time party to the ABL Credit Agreement.

"*ABL Debt*" means:

(1) Indebtedness (including letters of credit and reimbursement obligations with respect thereto) and other obligations incurred by the ABL Credit Parties under or in respect of the ABL Credit Agreement and/or secured by the ABL Security Documents; and

(2) guarantees by any Restricted Subsidiary in respect of any of the obligations described in the foregoing clause (1).

"*ABL Documents*" means, collectively, the ABL Credit Agreement, the ABL Intercreditor Agreement and the indenture, credit agreement or other agreement governing other ABL Debt and the security documents and guaranty agreements related to the foregoing.

"*ABL Intercreditor Agreement*" means that certain intercreditor agreement, dated as of the Issue Date, by and among the ABL Collateral Agent, the Notes Collateral Agent and each additional agent from time to time party thereto, and acknowledged by the grantors from time to time party thereto, as may be amended, restated, supplemented or replaced, in whole or in part, from time to time.

"*ABL Security Documents*" means all security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deeds of trust, security deeds, deeds to secure debt, hypothecs, collateral agency agreements, debentures or other instruments, pledges, grants or transfers for security or agreements related thereto executed and delivered by the Issuer or any Guarantor creating or perfecting (or purporting to create or perfect) a Lien upon Collateral (including, without limitation, financing statements under the UCC) in favor of the ABL Collateral Agent, for the benefit of any of the holders of ABL Debt, in each case, as amended, modified, restated, supplemented or replaced, in whole or in part, from time to time, in accordance with its terms and the applicable ABL Documents subject to the terms of the ABL Intercreditor Agreement, as applicable.

"*Acquired Debt*" means, with respect to any specified Person:

(1) Indebtedness, Disqualified Stock or preferred stock of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness, Disqualified Stock or preferred stock is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; *provided*, *however*, that any Indebtedness, Disqualified Stock or preferred stock of such acquired Person that is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon consummation of the transactions by which such Person merges with or into or becomes a Subsidiary of such Person shall not be considered to be Acquired Debt; and

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

"*Acquired Rental Asset EBITDA*" means pro forma "run rate" Consolidated EBITDA (determined, for the avoidance of doubt, without giving effect to clause (15) of such definition and as if references to the Issuer and its Restricted Subsidiaries in the definition of Consolidated EBITDA were references to such Acquired Rental Asset (as defined below)) under customer contracts in respect of any assets of the Issuer and its Restricted Subsidiaries added to the Rental Equipment (the "*Acquired Rental Assets*") during the applicable period calculated on a Pro Forma Basis as though such amount had been realized on the first day of such period for which Consolidated EBITDA is being determined and as if such amount was realized during the entirety of such period (determined in good faith by the Issuer in a manner consistent with past practice).

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Sections 2.01(e) and 4.09 hereof, as part of the same series as the Initial Notes.

"*Additional Refinancing Amount*" means, in connection with the refinancing of any Indebtedness, Disqualified Stock or preferred stock, the aggregate principal amount of additional Indebtedness, Disqualified Stock or preferred stock incurred to pay: (1) accrued and unpaid interest on the Indebtedness being refinanced; (2) the increased principal amount of any Indebtedness being refinanced resulting from the in-kind payment of interest on such Indebtedness (or in the case of Disqualified Stock or preferred stock being refinanced, additional shares of such Disqualified Stock or preferred stock); (3) the aggregate amount of original issue discount on the Indebtedness being refinanced; (4) premiums (including tender premiums) and other costs associated with the redemption, repurchase, retirement, discharge or defeasance of Indebtedness, Disqualified Stock and preferred stock being refinanced; and (5) all fees and expenses (including underwriting discounts, commitment, ticking and similar fees, expenses and discounts) associated with the repayment of the Indebtedness, Disqualified Stock and preferred stock being refinanced and the incurrence of the Indebtedness incurred or Disqualified Stock or preferred stock issued in connection with such refinancing.

"*Advisory Agreement*" means the corporate advisory services agreement by and among the Issuer (and/or one of its direct or indirect parent companies) and the Sponsor, as amended, restated, modified, or replaced from time to time.

"*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*," 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. For purposes of this definition, the terms "*controlling*," "*controlled by*" and "*under common control with*" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Custodian, Paying Agent, additional paying agent or authenticating agent.

"*Applicable Premium*" means, with respect to any Note on any redemption date, the greater of:

(1) 1.0% of the principal amount of the Note; and

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at April 15, 2024 (such redemption price being set forth in the table appearing in Section 3.07 hereof), *plus* (ii) all required interest payments

due on the Note through April 15, 2024 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(b) the principal amount of the Note.

Calculation of the Applicable Premium will be made by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate; *provided* that such calculation or the correctness thereof shall not be a duty or obligation of the Trustee.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange.

"*Asset Sale*" means:

(1) the sale, lease, conveyance or other disposition (whether by Division or otherwise) of any assets or rights by the Issuer or any of its Restricted Subsidiaries; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole will be governed by Sections 4.14 and/or 5.01 hereof (and not by Section 4.10 hereof); and

(2) the issuance of Equity Interests (other than directors' qualifying shares or shares or interests required to be held by foreign nationals or third parties to the extent required by applicable law or any preferred stock or Disqualified Stock of a Restricted Subsidiary of the Issuer issued in compliance with Section 4.09 hereof) by any of the Issuer's Restricted Subsidiaries or the sale by the Issuer or any of its Restricted Subsidiaries of Equity Interests in any of the Issuer's Restricted Subsidiaries.

Notwithstanding the foregoing, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction that involves assets or Equity Interests having a Fair Market Value of less than the greater of (x) $30.0 million and (y) 10.0% of Consolidated EBITDA;

(2) a transfer of assets between or among the Issuer and its Restricted Subsidiaries;

(3) an issuance or sale of Equity Interests by a Restricted Subsidiary of the Issuer to the Issuer or to another Restricted Subsidiary of the Issuer;

(4) the sale, lease or other transfer of products, equipment, inventory, services or accounts receivable in the ordinary course of business, the discount or forgiveness of accounts receivable in the ordinary course of business in connection with the collection or compromise thereof, the disposition of a business not comprising the disposition of an entire line of business and any sale or other disposition of surplus, damaged, worn-out or obsolete assets in the ordinary course of business (including the abandonment or other disposition of intellectual property that is, in the reasonable judgment of the Issuer, no longer economically practicable or commercially reasonable to maintain or useful in any material respect, taken as a whole, in the conduct of the business of the Issuer and its Restricted Subsidiaries taken as whole);

(5) licenses and sublicenses by the Issuer or any of its Restricted Subsidiaries of software or intellectual property;

(6) any surrender, termination or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business;

(7) the granting of Liens not prohibited by Section 4.12 hereof;

(8) the sale or other disposition of cash or Cash Equivalents;

(9) a Restricted Payment that does not violate Section 4.07 hereof or a Permitted Investment;

(10) leases and subleases and licenses and sublicenses by the Issuer or any of its Restricted Subsidiaries of real or personal property in the ordinary course of business;

(11) any liquidation or dissolution of a Restricted Subsidiary of the Issuer, provided that such Restricted Subsidiary's direct parent is also either the Issuer or a Restricted Subsidiary of the Issuer and immediately becomes the owner of such Restricted Subsidiary's assets;

(12) [Reserved];

(13) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary of the Issuer after the Issue Date, including, without limitation, Sale/Leaseback Transactions permitted by this Indenture;

(14) the granting of any option or other right to purchase, lease or otherwise acquire inventory and delinquent accounts receivable in the ordinary course of business;

(15) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(16) the sale, transfer, termination or other disposition of Hedging Obligations incurred in compliance with this Indenture;

(17) foreclosure, condemnation or any similar actions with respect to any property or other assets;

(18) a sale or transfer of accounts receivable and related assets of the type specified in the definition of "Securitization Transaction" (or a fractional undivided interest therein) to a Securitization Entity in a Qualified Securitization Transaction;

(19) any trade-in of equipment by the Issuer or any Restricted Subsidiary of the Issuer in exchange for other equipment; provided that in the good faith judgment of the Issuer, the Issuer or such Restricted Subsidiary receives equipment having a Fair Market Value equal or greater than the equipment being traded in;

(20) the transfer, sale or other disposition resulting from any involuntary loss of title, involuntary loss or damage to or destruction of or any condemnation or other taking of, any property or assets of the Issuer or any Restricted Subsidiary;

(21) the termination of leases and subleases in the ordinary course of business;

(22) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Permitted Business;

(23) 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 or similar binding arrangements;

(24) the lapse, cancellation or abandonment of intellectual property rights in the ordinary course of business, which in the reasonable good faith determination of the Issuer are not material to the conduct of the business of the Issuer and the Restricted Subsidiaries taken as a whole;

(25) the sale of any property in a Sale/Leaseback Transaction within six months of the acquisition of such property; and

(26) any transfer of title or other disposition of assets subject or pursuant to any Floorplan Indebtedness (or, for the avoidance of doubt, any documents governing Floorplan Indebtedness).

"*Bankruptcy Law*" means Title 11, United States Code, or any similar Federal, state or foreign law for the relief of debtors.

"*Beneficial Owner*" has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will not be deemed to have beneficial ownership of any securities that such "person" has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms "*beneficial ownership*," "*beneficially owns*" and "*beneficially owned*" have a corresponding meaning.

"*Board of Directors*" means, as to any Person, the board of directors, board of managers, sole member or managing member or other governing body of such Person, or if such Person is owned or managed by a single entity or has a general partner, the board of directors, board of managers, sole member or managing member or other governing body of such entity or general partner, or in each case, any duly authorized committee thereof, and the term "directors" means members of the Board of Directors.

"*Borrowing Base*" means, as of any date, an amount equal to: (1) 90.0% of the book value of all accounts receivables of the ABL Credit Parties; *plus* (2) the lesser of (i) 75.0% of the book value of all parts inventory of the ABL Credit Parties and (ii) 90.0% of the net orderly liquidation value of all parts inventory of the ABL Credit Parties; *plus* (3) the sum of (i) 95.0% of the net book value of all Fleet Inventory (including eligible Fleet Inventory held for sale) of the ABL Credit Parties that has not been appraised by an appraisal and (ii) 85.0% of the net orderly liquidation value of all Fleet Inventory (including eligible Fleet Inventory held for sale) of the ABL Credit Parties that has been appraised by an appraisal; *plus* (4) 100.0% of eligible cash of the ABL Credit Parties.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital 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 notes thereto) in accordance with GAAP; *provided* that (x) no obligation will be deemed a "Capital Lease Obligation" for any purpose under this Indenture if such obligation would not, as of December 31, 2018, have been required to be capitalized and reflected as a liability on a balance sheet in accordance with GAAP.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(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, partnership interests (whether general or limited);

(4) in the case of a limited liability company, membership interests ; and

(5) 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 Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Cash*" means, for purposes of certain agreements between and/or among certain Permitted Holders, the Issuer and/or their respective Affiliates (as applicable), cash and the defined term "Cash Equivalents."

"*Cash Contribution Amount*" means the aggregate amount of cash contributions made to the common equity capital of the Issuer or any Restricted Subsidiary described in the definition of "Contribution Indebtedness."

"*Cash Equivalents*" means:

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

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

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

(4) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by (a) the United States government or any agency or instrumentality of the United States government; *provided* that the full faith and credit of the United States is pledged in support of those securities or (b) Canada or any agency or instrumentality thereof; *provided* that the full faith and credit of Canada is pledged in support of those securities, and in each case, having maturities of not more than 24 months from the date of acquisition;

(5) certificates of deposit and eurodollar time deposits with maturities of 24 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 24 months and overnight bank deposits, in each case, with any commercial bank having capital and surplus in excess of $250 million in the case of domestic banks or $100 million (or the dollar equivalent thereof) in the case of foreign banks;

(6) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (4) and (5) above entered into with any financial institution meeting the qualifications specified in clause (5) above;

(7) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within 24 months after the date of acquisition;

(8) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (7) of this definition; and

(9) Indebtedness or preferred stock issued by Persons with a rating of A or higher from S&P or A2 from Moody's with maturities of 24 months or less from the date of acquisition.

"*Cash Management Services*" means any of the following to the extent not constituting a line of credit (other than an overnight draft facility that is not in default): automated clearing house transactions, treasury and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

"*CFC*" means a controlled foreign corporation within the meaning of Section 957 of the Code.

"*Change of Control*" means the occurrence of any of the following:

(1) any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Permitted Holders, acquires beneficial ownership of Voting Stock of the Issuer representing more than 50% of the aggregate ordinary voting power for the election of directors of the Issuer (determined on a fully diluted basis);

(2) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person other than one or more Permitted Holders; or

(3) the Issuer ceases to be a Wholly Owned Subsidiary of Holdings or, following a consolidation or merger of Issuer that complies with the requirements of Section 5.01 hereof, any Surviving Entity.

Notwithstanding the preceding, a conversion of the Issuer or any Restricted Subsidiary from a limited liability company, corporation, limited partnership or other form of entity to a limited liability company, corporation, limited partnership or other form of entity or an exchange of all of the outstanding Capital Stock in one form of entity for Capital Stock for another form of entity shall not constitute a Change of Control, so long as immediately following such conversion or exchange the "persons" (as that term is used in Section 13(d)(3) of the Exchange Act) who Beneficially Owned the Capital Stock of such entity immediately prior to such transactions continue to Beneficially Own in the aggregate more than 50% of the Voting Stock of such entity, or continue to Beneficially Own sufficient Equity Interests in such entity to elect a majority of its directors, managers, trustees or other persons serving in a similar capacity for such entity, and in either case no "person" Beneficially Owns more than 50% of the Voting Stock of such entity. Furthermore, (i) the transfer of assets between or among the Issuer and its Restricted Subsidiaries shall not itself constitute a Change of Control and (ii) a Person or group shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) prior to the consummation of the transactions contemplated by such agreement.

"*Clearstream*" means Clearstream Banking, S.A.

"*Code*" means the U.S. Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated thereunder.

"*Collateral*" means any and all assets and property of any Grantor, with respect to which a Lien is granted (or purported to be granted) as security for any Obligations under the Note Documents, this Indenture and the Notes (including proceeds and products thereof), in each case, except to the extent constituting Excluded Assets.

"*Commission*" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Securities Act of 1933, as amended, the Exchange Act and the Trust Indenture Act then the body performing such duties at such time.

"*Consolidated EBITDA*" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) provision for Taxes based on income, profits or capital (including state franchise Taxes and similar Taxes in the nature of income tax) of such Person and its Restricted Subsidiaries for such period, foreign withholding Taxes, giving effect to any payroll tax credits, income tax credits and similar credits and including an amount equal to the tax distributions actually made to the holders of the Capital Stock of such Person or any direct or indirect parent of such Person in respect of such period in accordance with clause (3) of the definition of "Permitted Payments to Parent," as though such amounts had been paid as income Taxes directly by such Person, in each case, to the extent that such provision for Taxes was deducted in computing such Consolidated Net Income; *plus*

(2) the consolidated depreciation and amortization charges and expense of such Person and its Restricted Subsidiaries for such period (including, without limitation, amortization of turnaround costs, goodwill and other intangibles, deferred financing fees, debt issuance costs, commissions, fees and expenses), to the extent such charges or expenses were deducted in computing such Consolidated Net Income; *plus*

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) any other consolidated non-cash losses, charges and expenses of such Person and its Restricted Subsidiaries, including any write-offs or write-downs, for such period, to the extent that such consolidated non-cash charges were included in computing such Consolidated Net Income; *provided* that if any such non-cash charge represents an accrual or reserve for

anticipated cash charges in future period, (i) such Person may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent such Person does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; *plus*

(5) any losses from foreign currency transactions (including losses related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; *plus*

(6) (a) the Specified Permitted Adjustments and (b) any other cost savings, operating expense reductions, operating improvements and synergies permitted to be added back to this definition pursuant to the definition of "Pro Forma Cost Savings" (including, without limitation, expenses attributable to the implementation of such cost savings initiatives and costs and expenses incurred after the Issue Date related to employment of terminated employees incurred by such Person during such period to the extent such costs and expenses were deducted in computing Consolidated Net Income); *plus*

(7) losses in respect of post-retirement benefits of such Person, as a result of the application of ASC 715, *Compensation-Retirement Benefits*, to the extent that such losses were deducted in computing such Consolidated Net Income; *plus*

(8) the amount of fees, expenses and indemnities incurred or reimbursed by such Person pursuant to clauses (7) and (20) of Section 4.11(b) hereof; *plus*

(9) any proceeds from business interruption insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; *plus*

(10) any fees and expenses related to a Qualified Securitization Transaction, to the extent such fees and expenses are included in computing Consolidated Net Income; *plus*

(11) any contingent or deferred payments (including, without limitation, earn-out payments, noncompete payments and consulting payments) made in connection with the Acquisition or any acquisitions or Investments, to the extent paid in cash or accrued during such period; *plus*

(12) the amount of loss or discount on sales of receivables and related assets to a Securitization Entity in connection with a Qualified Securitization Transaction, to the extent included in computing Consolidated Net Income; *plus*

(13) the amount of any interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any Restricted Subsidiary of such Person that is not a Wholly Owned Restricted Subsidiary of such Person; *plus*

(14) [reserved]; *plus*

(15) Acquired Rental Asset EBITDA; *provided* that no amount shall be added pursuant to this clause (15) to the extent (i) duplicative of any amounts otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period, (ii) the contract relating to such Acquired Rental Asset is no longer in effect as of such date of determination or (iii) such Acquired Rental Asset is no longer owned or part of the Rental Equipment as of such date of determination; *provided further* that any such add backs made pursuant to this clause (15) shall not exceed 25% of Consolidated EBITDA (after giving effect to such add backs); *plus*

(16) with respect to any joint venture that is not a Restricted Subsidiary, an amount equal to the proportion of those items described in clauses (1), (2) and (3) above relating to such joint venture corresponding to such Person's and its Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Restricted Subsidiary) solely to the extent Consolidated Net Income of such joint venture was reduced thereby; *minus*

(17) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; *minus*

(18) any gains from foreign currency transactions (including gains related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such gains were taken into account in computing such Consolidated Net Income; *minus*

(19) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period;

provided that the Issuer may, in its sole discretion, elect to not make any adjustment for any item pursuant to the foregoing clauses (1) through (19) above if any such item individually is less than $2 million in any fiscal quarter.

Unless otherwise specified in this Indenture, any reference to Consolidated EBITDA shall be deemed to mean the Consolidated EBITDA of the Issuer and its Restricted Subsidiaries calculated for the most recent period of four consecutive fiscal quarters for which internal financial statements are available immediately preceding the date on which such calculation is made, calculated on a Pro Forma Basis for such period.

"*Consolidated Interest Expense*" means, for any period of four consecutive fiscal quarters for which internal financial statements are available immediately preceding the date on which such calculation is made, for the Issuer and its Restricted Subsidiaries on a consolidated basis, all cash interest, premium payments, debt discount, charges and related fees and expenses, net of interest income, of the Issuer and its Restricted Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP (including commissions, discounts, yield and other fees (including related interest expenses) related to any Qualified Securitization Transaction or any receivables facility), excluding (a) up-front or financing fees, transaction costs, commissions, expenses, premiums or charges, (b) costs associated with obtaining, or breakage costs in respect of swap or hedging agreements, (c) amortization of deferred financing costs and (d) all cash dividends, whether paid or accrued, on any series of preferred stock or any series of Disqualified Stock of such Person or any of its Restricted Subsidiaries, excluding items eliminated in consolidation, in each case, determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, for purposes of calculating Consolidated Interest Expenses for any period that includes a fiscal quarter (or portion thereof) prior to the Issue Date (other than as a component of Consolidated EBITDA), Consolidated Interest Expenses shall be calculated from the period from the Issue Date to the date of determination divided by the number of days in such period and multiplied by 365.

"*Consolidated Net Income*" means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP and without any reduction in respect of (x) preferred stock dividends or (y) any dividend with proceeds of the offering of the Notes; *provided* that:

(1) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses or charges (including related to the Transactions) or any restructuring charges or reserves, including, without limitation, any expenses related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;

(2) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or incurrence or repayment of Indebtedness permitted under this Indenture, including a refinancing thereof (in each case whether or not successful) (including any such costs and charges incurred in connection with the Transactions), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary course of business or the disposition of securities or the early extinguishment of Indebtedness or other derivative instruments, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;

(3) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be excluded, *provided* that the income of such Person will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Restricted Subsidiary of the Person;

(4) the net income (or loss) of any Person and its Restricted Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-Wholly Owned Restricted Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Capital Stock of such Restricted Subsidiary held by such third parties;

(5) solely for the purpose of Section 4.07 hereof, the net income (but not loss) of any Restricted Subsidiary (other than any Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; *provided* that the Consolidated Net Income of such Person will be increased by the amount of dividends or distributions or other payments actually paid in cash (or converted to cash) by any such Restricted Subsidiary to such Person in respect of such period, to the extent not already included therein;

(6) the cumulative effect of any change in accounting principles will be excluded;

(7) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Issuer or a Restricted Subsidiary of the Issuer, will be excluded;

(8) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of GAAP and the amortization of intangibles and other fair value adjustments arising from the application of GAAP, including pursuant to ASC 805, *Business Combinations*, ASC 350, *Intangibles-Goodwill and Other*, or ASC 360, *Property, Plant and Equipment*, as applicable, will be excluded;

(9) any net after-tax income or loss from disposed, abandoned or discontinued or transferred or closed operations and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations will be excluded;

(10) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or rent expense, any one time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Transactions or any other acquisition prior to or following the Issue Date will be excluded;

(11) an amount equal to the tax distributions actually made to the holders of the Capital Stock of such Person or any direct or indirect parent of such Person in respect of such period in accordance with clause (3) of the definition of "Permitted Payments to Parent" will be included as though such amounts had been paid as income taxes directly by such Person for such period;

(12) unrealized gains and losses relating to foreign currency translation or foreign currency transactions, including those relating to mark-to-market of Indebtedness resulting from the application of GAAP, including pursuant to ASC 830, *Foreign Currency Matters* (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;

(13) any net gain or loss from Hedging Obligations or in connection with the early extinguishment of Hedging Obligations (including of ASC 815, *Derivatives and Hedging*) shall be excluded;

(14) the amount of any restructuring, business optimization, acquisition and integration costs and charges (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, recruiting and signing bonuses and expenses, contract termination costs, including future lease commitments, costs related to the start-up (including entry into new market/channels and new service offerings), preopening, opening, closure or relocation, reconfiguration or consolidation of facilities and costs to relocate employees, systems, facilities or equipment conversion costs, consulting fees, costs associated with tax projects and audits) or other fees related to any of the foregoing (including any such costs, charges and fees incurred in connection with the Transactions) will be excluded;

(15) accruals and reserves that are established or adjusted within 24 months after the Issue Date that are so required to be established as a result of the Transactions in accordance with GAAP shall be excluded;

(16) any Public Company Costs will be excluded;

(17) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses, costs of surety bonds, charges owed with respect to letters of credit, bankers' acceptances or similar facilities, and expensing of any bridge, commitment or other financing fees (including in connection with a transaction undertaken but not completed), will be excluded;

(18) all discounts, commissions, fees and other charges (including interest expense) associated with any Qualified Securitization Transaction will be excluded;

(19) (i) the non-cash portion of "straight-line" rent expense will be excluded and (ii) the cash portion of "straight-line" rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(20) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(21) non-cash charges or income relating to adjustments to deferred tax asset valuation allowances will be excluded; and

(22) cash dividends or returns of capital from Investments (such return of capital not reducing the ownership interest in the underlying Investment), in each case received during such period, to the extent not otherwise included in Consolidated Net Income for that period or any prior period subsequent to the Issue Date will be included;

provided that the Issuer may, in its sole discretion, elect to not make any adjustment for any item pursuant to the foregoing clauses (1) through (22) above if any such item individually is less than $2 million in any fiscal quarter.

"*Consolidated Newly Acquired Inventory EBITDA*" means, as to any Person, with respect to any period of at least one month, an amount equal to the Consolidated EBITDA of such Person for such period attributable solely to the newly acquired inventory of such Person.

"*Consolidated Senior Secured Debt Ratio*" means, as of any date of determination, the ratio of (1) (x) Consolidated Total Indebtedness that is secured by a Lien on any assets of the Issuer or any of its Restricted Subsidiaries as of such date *minus* (y) unrestricted cash and Cash Equivalents (but excluding in all cases cash proceeds from Indebtedness incurred on the date of determination) held by the Issuer and its Restricted Subsidiaries as of such date of determination, in each case, calculated on a Pro Forma Basis to (2) the Consolidated EBITDA of the Issuer for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, and in each case, calculated on a Pro Forma Basis; *provided* that any such calculation

shall be made as provided in clause (f) of Section 4.09 hereof; *provided, further* that, in the event that the Issuer shall classify Indebtedness incurred on the date of determination as secured in part pursuant to a ratio-based or ratio-referent clause of the definition of "Permitted Liens" and in part pursuant to one or more non-ratio-based or non-ratio-referent clauses of such definition, any calculation of Consolidated Total Indebtedness that is secured by a Lien for purposes of clause (x) above on such date (but not in respect of any future calculation following such date) shall not include any such Indebtedness (and shall not give effect to any repayment, repurchase, redemption, defeasance or other acquisition, retirement or discharge of Indebtedness from the proceeds thereof) to the extent secured pursuant to any such non-ratio-based or non-ratio-referent clause of such definition.

"*Consolidated Total Debt Ratio*" means, as of any date of determination, the ratio of (1) (x) Consolidated Total Indebtedness as of such date minus (y) unrestricted cash and Cash Equivalents held by the Issuer and its Restricted Subsidiaries as of such date of determination, and in each case, calculated on a Pro Forma Basis to (2) the Consolidated EBITDA of the Issuer for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding such date, calculated on a Pro Forma Basis; *provided* that any such calculation shall be made as provided in clause (f) of Section 4.09 hereof.

"*Consolidated Total Indebtedness*" means, as of any date of determination, an amount equal to the sum of (without duplication) (i) all Capital Lease Obligations of the Issuer and its Restricted Subsidiaries, (ii) all Indebtedness of the Issuer and its Restricted Subsidiaries of the type described in clause (1) of the definition of "Indebtedness" and (iii) all Contingent Obligations of the Issuer and its Restricted Subsidiaries in respect of Indebtedness of any third Person of the type referred to in the preceding clauses (i) and (ii), in each case, determined on a consolidated basis in accordance with GAAP and calculated on a Pro Forma Basis; *provided* that Consolidated Total Indebtedness shall not include Indebtedness in respect of any notes or other debt securities that have been defeased or satisfied and discharged in accordance with the applicable indenture or with respect to which the required deposit has been made in connection with a call for repurchase or redemption to occur within the time period set forth in the applicable indenture, in each case to the extent such transactions are permitted by the applicable indenture. For the avoidance of doubt, it is understood that obligations under (i) any receivables facility and any Qualified Securitization Transaction and (ii) any undrawn amounts under any revolving credit facility (including, without limitation, the ABL Credit Agreement), in each case, do not constitute Consolidated Total Indebtedness.

"*Contingent Obligation*" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made nonrecourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"*continuing*" means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"*Contribution Indebtedness*" means Indebtedness or Disqualified Stock of the Issuer or any Restricted Subsidiary of the Issuer and preferred stock of any Restricted Subsidiary in an aggregate principal amount not greater than one times the aggregate amount of cash contributions (other than Excluded Contributions, Designated Preferred Stock, Disqualified Stock or cash contributed by the Issuer or a Restricted Subsidiary of the Issuer) made to the common equity capital of the Issuer or any Restricted Subsidiary of the Issuer after the Issue Date; *provided* that:

(1) the cash received or contributed shall not increase the amount available for making Restricted Payments to the extent the Issuer or its Restricted Subsidiaries incurred Indebtedness in reliance thereon;

(2) the cash received or contributed shall be excluded for purposes of incurring Indebtedness to the extent the Issuer or any of its Restricted Subsidiaries make a Restricted Payment in reliance on such cash; and

(3) such Contribution Indebtedness (a) is incurred within 210 days after the making of such cash contributions and (b) is so designated as Contribution Indebtedness pursuant to an Officer's Certificate on the date of incurrence thereof.

"*Corporate Trust Office*" will be the office of the Trustee or the Notes Collateral Agent, as applicable, at which at any particular time its corporate trust business relating to this Indenture shall be principally administered, which office as of the date of this instrument is located at the address specified in Section 13.01 hereof, except that with respect to presentation of Notes for payment or for registration of transfer or exchange, such term shall mean the office or agency of the Trustee at which at any particular time its corporate agency business shall be conducted, which office at the date of this instrument is located at 1100 North Market Street, 5th Floor, Wilmington, Delaware 19890; Attention: Workflow Management, or, in the case of any of such offices or agency, such other address as the Trustee or Notes Collateral Agent, as applicable, may designate from time to time by notice to the Issuer.

"*Credit Agreement*" means (i) the ABL Credit Agreement and (ii) whether or not the ABL Credit Agreement remains outstanding, if designated by the Issuer to be included in the definition of "Credit Agreement," one or more (A) debt facilities, indentures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, notes, mortgages, guarantees, collateral documents, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (provided that such increase in borrowings is permitted under this Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

"*Custodian*" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"*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.

"*Derivative Instrument*" with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person's investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/or the creditworthiness of the Company and/or any one or more of the Guarantors (the "*Performance References*").

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Designated Non-cash Consideration*" means the Fair Market Value of non-cash consideration received by the Issuer or one of its Restricted Subsidiaries 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 Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

"*Designated Preferred Stock*" means preferred stock of the Issuer or any direct or indirect parent of the Issuer (other than Disqualified Stock), that is issued for cash (other than to the Issuer or any of its Subsidiaries or an employee stock plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on the date of issuance thereof, the cash proceeds of which are excluded from the calculation set forth in Section 4.07(a)(z) hereof.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature; *provided*, *however*, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided*, *further*, *however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Issuer, any direct or indirect parent of the Issuer or the Issuer's Restricted Subsidiaries or by any such plan to such employees, such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided*, *further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock will not be deemed to be Disqualified Stock. Capital Stock will not constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale.

"*Dividing Person*" has the meaning assigned to it in the definition of "Division."

"*Division*" means the division of the assets, liabilities and/or obligations of a Person (the "*Dividing Person*") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"*Domestic Subsidiary*" means any Restricted Subsidiary of the Issuer that was formed under the laws of the United States or any state of the United States or the District of Columbia.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means a public or private sale of either (1) Equity Interests of the Issuer by the Issuer (other than Disqualified Stock and other than to a Subsidiary of the Issuer or any direct or indirect parent of the Issuer) or (2) Equity Interests of a direct or indirect parent of the Issuer (other than to the Issuer, a Subsidiary of the Issuer or any direct or indirect parent of the Issuer), in each case other than public offerings with respect to the Issuer's or any direct or indirect parent company's common stock registered on Form S-8, and any such public or private sale that constitutes an Excluded Contribution.

"*Euroclear*" means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"Excluded Assets" shall have the meaning given to the term "Excluded Collateral" in the Security Agreement.

"*Excluded Contributions*" means the net cash proceeds, Cash Equivalents and/or Fair Market Value of Investment Grade Securities received by the Issuer after the Issue Date from:

(1) contributions to its common equity capital; and

(2) the sale (other than to the Issuer or to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer or any Subsidiary of the Issuer) of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Issuer;

in each case designated as Excluded Contributions pursuant to an Officer's Certificate, the proceeds of which are excluded from the calculation set forth in Section 4.07(a)(z).

"*Excluded Subsidiaries*" means Unrestricted Subsidiaries, Immaterial Subsidiaries, Regulated Subsidiaries, not for profit Subsidiaries, any captive insurance company, Securitization Entities, Foreign Subsidiaries, FSHCOs, any Subsidiary with respect to which the provision of a guarantee by such Subsidiary would result in material adverse tax consequences to the Issuer or to a Subsidiary of the Issuer as reasonably determined by the Issuer, any Domestic Subsidiary of a Foreign Subsidiary that is a CFC, any non-Wholly Owned Subsidiary and any Subsidiary that is prohibited, but only so long as such Subsidiary would be prohibited, by applicable law, rule or regulation or by any contractual obligation existing on the Issue Date or existing at the time of acquisition thereof after the Issue Date (so long as such prohibition did not arise as part of such acquisition), in each case, from guaranteeing the Notes or which would require governmental (including regulatory) consent, approval, license or authorization to provide an Note Guarantee unless such consent, approval, license or authorization has been received (but without obligation to seek the same); *provided* that if any Subsidiary (other than any Subsidiary organized under the laws of Canada) shall at any time not constitute an "Excluded Subsidiary" (or similar term) under the ABL Credit Agreement, including, for the avoidance of doubt, if the Borrower (as defined in the ABL Credit Agreement) under the ABL Credit Agreement shall have designated any Subsidiary that would otherwise constitute an "Excluded Subsidiary" hereunder as a Subsidiary Guarantor (as defined in the ABL Credit Agreement), with respect to the obligations of the Borrower under the ABL Credit Agreement, then such Subsidiary shall not be considered an "Excluded Subsidiary" for purposes of this Indenture and shall become a Subsidiary Guarantor hereunder in accordance with Section 4.16 hereof and such Subsidiary shall grant a perfected lien on substantially all of its assets to the Notes Collateral Agent for the benefit of the Holders of the Notes regardless of whether such Subsidiary is organized in a jurisdiction other than the United States (notwithstanding anything to the contrary contained herein), pursuant to arrangements in substantially the same form as agreed to between the ABL Collateral Agent and the Issuer and in the case of any Foreign Subsidiary, the jurisdiction of such Subsidiary shall be reasonably acceptable to the ABL Collateral Agent, taking into account the availability and enforceability of guarantees and collateral pledges in such jurisdiction.

"*Fair Market Value*" means the value (which, for the avoidance of doubt, will take into account any liabilities, contingent or otherwise, associated with related assets) that would be paid by a willing buyer to an unaffiliated willing seller in an arm's-length transaction, determined in good faith by the Issuer (unless otherwise provided in this Indenture).

"*Fixed Charge Coverage Ratio*" means, with respect to any Person as of any date, the ratio of (1) Consolidated EBITDA of such Person for the most recent period of four consecutive fiscal quarters for which internal financial statements are available immediately preceding the date on which such calculation of the Fixed Charge Coverage Ratio is made, calculated on a Pro Forma Basis for such period to (2) the Fixed Charges of such Person for such period calculated on a Pro Forma Basis. In the event that the Issuer or any of its Restricted Subsidiaries incurs or redeems or repays any Indebtedness (other than in the case of revolving credit borrowings or revolving advances under any Qualified Securitization Transaction unless the related commitments have been terminated and such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems preferred stock or Disqualified Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to, substantially simultaneously with or in connection with the event for which the calculation of the Fixed Charge Coverage Ratio is made, then the Fixed Charge Coverage Ratio shall be calculated on a Pro Forma Basis; *provided* that any such calculation shall be made as provided in clause (f) of Section 4.09 hereof.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the Consolidated Interest Expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, to the extent such expense was deducted in computing Consolidated Net Income, including, without limitation, amortization of original issue discount, the interest component of all payments associated with Capital Lease Obligations, and the net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates (other than in connection with the early termination thereof, and excluding any non-cash interest expense attributable to the mark-to-market valuation of Hedging Obligations or other derivatives pursuant to GAAP) and excluding amortization or write-off of deferred financing fees, debt issuance costs, commissions, discounts, fees and expenses, including any expensing of bridge, commitment fees or other financing fees, costs of surety bonds, charges owed with respect to letters of credit, bankers' acceptances or similar facilities, the non-cash portion of interest expense resulting from the reduction in the carrying value under purchase accounting of the Issuer's outstanding Indebtedness and commissions, discounts, yield and other fees and charges (including any interest expense) related to any Securitization Transaction; *provided* that, for purposes of calculating Consolidated Interest Expense, no

effect will be given to the discount and/or premium resulting from the bifurcation of derivatives under ASC 815, *Derivatives and Hedging*, as a result of the terms of the Indebtedness to which such Consolidated Interest Expense applies; *plus*

(2) the Consolidated Interest Expense of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) all cash dividends, whether paid or accrued, on any series of preferred stock or any series of Disqualified Stock of such Person or any of its Restricted Subsidiaries, excluding items eliminated in consolidation, in each case, determined on a consolidated basis in accordance with GAAP; *minus*

(4) the consolidated interest income of such Person and its Restricted Subsidiaries for such period, whether received or accrued, to the extent such income was included in determining Consolidated Net Income;

provided that (a) when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Issue Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Issue Date by 365 and then dividing such product by the number of days from and including the Issue Date to and including the last day of such period and (b) in the case of any Person that became a Restricted Subsidiary of such Person after the commencement of such four-quarter period, the interest expense of such Person paid in cash prior to the date on which it became a Restricted Subsidiary of such Person will be disregarded. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

"*Fixed GAAP Date*" means the Issue Date; *provided* that at any time after the Issue Date, the Issuer may by written notice to the Trustee elect to change the Fixed GAAP Date to be the date specified in such notice, and upon such notice, the Fixed GAAP Date shall be such date for all periods beginning on and after the date specified in such notice.

"*Fixed GAAP Terms*" means (a) the definitions of the terms "Fixed Charges," "Fixed Charge Coverage Ratio," "Consolidated Interest Expense," "Consolidated Net Income," "Consolidated Senior Secured Debt Ratio," "Consolidated Total Debt Ratio," "Consolidated Total Indebtedness," "Consolidated EBITDA," "Indebtedness," and "Total Assets", (b) all defined terms in this Indenture to the extent used in or relating to any of the foregoing definitions, and all ratios and computations based on any of the foregoing definitions, and (c) any other term or provision of this Indenture or the Notes that, at the Issuer's election, may be specified by the Issuer by written notice to the Trustee from time to time; *provided* that the Issuer may elect to remove any term from constituting a Fixed GAAP Term.

"*Fleet Inventory*" means utility trucks, specialty equipment and similar goods owned by the Issuer and its Restricted Subsidiaries comprising such entities' leased and rental equipment fleet.

"*Floorplan Financing Agreements*" mean (i)(a) the Inventory Loan, Guaranty and Security Agreement, dated as of August 15, 2017, by and among Custom Truck & Equipment, LLC, the other credit parties, the lenders and PNC Equipment Finance, LLC, as amended by the First Amendment to Inventory Loan, Guaranty and Security Agreement, dated as of May 4, 2018, the Second Amendment to Inventory Loan, Guaranty and Security Agreement, dated as of May 4, 2018, the Third Amendment to Inventory Loan, Guaranty and Security Agreement, dates as of June 4, 2018, the Fourth Amendment to Inventory Loan, Guaranty and Security Agreement, dated as of November 30, 2018, the Fifth Amendment to Inventory, Loan, Guaranty and Security Agreement, dated as of August 5, 2019, and the Sixth Amendment to Inventory Loan, Guaranty and Security Agreement, dated as of August 30, 2019, (b) the Wholesale Financing Agreement, dated as of March 13, 2006 between Custom Truck & Equipment, LLC and Mercedes-Benz Financing Services USA LLC (successor in interest to DaimlerChrysler Financial Services Americas LLC), as amended by the Amendment to Wholesale Financing Agreement, dated as of January 30, 2015 and the Terms and Conditions to Wholesale Financing Agreement, dated as of January 30, 2019, and (c) the Inventory Financing Agreement, dated as of June 2, 2020, between Custom Truck & Equipment, LLC and PACCAR Financial Corp., or (ii) a financing agreement of a type substantially similar to the foregoing.

"*Floorplan Indebtedness*" means indebtedness incurred pursuant to any Floorplan Financing Agreement.

"*Foreign Subsidiary*" means any Restricted Subsidiary of the Issuer that is not a Domestic Subsidiary

"*FSHCO*" means (i) any Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) of one or more Foreign Subsidiaries that are CFCs and (ii) any Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) in one or more Foreign Subsidiaries that are CFCs and/or, directly or indirectly, in one or more other entities described in clause (i) of this definition.

"*GAAP*" means generally accepted accounting principles 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 Accounting Standards Codification or in such other statements by such other entity as have been approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the Commission applicable only to public companies, and except as set forth in the definition of "Capital Lease Obligation"), as in effect on the Fixed GAAP Date (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Indenture); *provided* that the Issuer may at any time elect by written notice to the Trustee to use IFRS in lieu of GAAP for financial reporting purposes and, upon any such notice, references herein to GAAP shall thereafter be construed to mean (a) for periods beginning on and after the date specified in such notice, IFRS as in effect on the date specified in such notice (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Indenture) and (b) for prior periods, GAAP as defined in the first sentence of this definition. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP. For the purposes of this Indenture, the term "consolidated," with respect to any Person, shall mean such Person consolidated with its Restricted Subsidiaries, and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary will be accounted for as an Investment.

"*Global Note Legend*" means the legend set forth in Section 2.06(g)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes deposited with or on behalf of and registered in the name of the Depositary or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Section 2.01, 2.06(b)(3) or 2.06(d)(1) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

"*Grantor*" shall have the meaning given to such term in the Security Agreement.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantors*" means Holdings and any Subsidiary of the Issuer that executes a Note Guarantee in accordance with the provisions of this Indenture and their respective successors and assigns that constitute Subsidiaries of the Issuer (other than Excluded Subsidiaries), in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

"*Holder*" means a Person in whose name a Note is registered.

"*Holdings*" has the meaning assigned to such term in the introductory paragraphs hereto.

"*IFRS*" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"*Immaterial Subsidiary*" means any Restricted Subsidiary of the Issuer that (i) has Total Assets together with all other Immaterial Subsidiaries (as determined in accordance with GAAP) of less than 5.0% of the Issuer's Total Assets measured at the end of the most recent fiscal period for which internal financial statements are available and on a Pro Forma Basis giving effect to any acquisitions or depositions of companies, division or lines of business since such balance sheet date and on or prior to the date of acquisition of such Subsidiary and (ii) has revenue together with all other Immaterial Subsidiaries (as determined in accordance with GAAP) for the period of four consecutive fiscal quarters ending on such date of less than 5.0% of the combined revenue of the Issuer and its Restricted Subsidiaries for such period (measured for the four quarters ended most recently for which internal financial statements are available and on a Pro Forma Basis giving effect to any acquisitions or depositions of companies, division or lines of business since the start of such four quarter reference period).

"*Increased Amount*" means, with respect to any Indebtedness, Disqualified Stock or preferred stock, any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or the issuance of additional Disqualified Stock or preferred stock, accretion of original issue discount or liquidation preference, any fees, underwriting discounts, commitment, ticking and similar fees, expenses and discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection therewith and increases in the amount of Indebtedness, Disqualified Stock or preferred stock outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

"*Indebtedness*" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables, deferred compensation, deferred rent (other than for Capital Lease Obligations), and landlord allowances), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations;

(5) representing the balance of deferred and unpaid purchase price of any property or services due more than 60 days after such property is acquired or such services are completed; or

(6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person; *provided* that (a) Contingent Obligations incurred in the ordinary course of business, (b) obligations under or in respect of Securitization Transactions and (c) obligations, to the extent such obligations would otherwise constitute Indebtedness, under any agreement that has been defeased or satisfied and discharged pursuant to the terms of such agreement, shall in each case be deemed not to constitute Indebtedness.

The term "Indebtedness" shall not include any Floorplan Indebtedness or any lease, concession or license of property (or Guarantee thereof) that would be considered an operating lease under GAAP as in effect as of December 31, 2018, any prepayments of

deposits received from clients or customers in the ordinary course of business or consistent with past practices, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) incurred prior to the Issue Date or in the ordinary course of business or consistent with past practices. Indebtedness shall be calculated without giving effect to the provisions of ASC 815, *Derivatives and Hedging* and related interpretations to the extent such provisions would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Independent Financial Advisor*" means an accounting, appraisal or investment banking firm or consultant to Persons engaged in a Permitted Business, in each case of nationally recognized standing that is, in the good faith determination of the Issuer, qualified to perform the task for which it has been engaged.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Initial Notes*" means the $920 million aggregate principal amount of Notes issued under this Indenture on the Issue Date.

"*Initial Purchasers*" means BofA Securities, Inc., Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Morgan Stanley & Co. LLC, Blackstone Securities Partners L.P., BMO Capital Markets Corp., Stifel Nicolaus & Company, Incorporated, CIBC World Markets Corp., Fifth Third Securities, Inc., MUFG Securities Americas Inc., Oppenheimer & Co. Inc., PNC Capital Markets LLC, RBC Capital Markets LLC and Wells Fargo Securities, LLC.

"*insolvency or liquidation proceeding*" means:

(1) any case or proceeding commenced by or against the Issuer or any Guarantor under the Bankruptcy Law, any other case or proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Issuer or any Guarantor, any receivership or assignment for the benefit of creditors relating to the Issuer or any Guarantor or any similar case or proceeding relative to the Issuer or any other Guarantor or its respective creditors, as such, in each case whether or not voluntary; or

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Issuer or any Guarantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; *provided* that the liquidation or dissolution of any Subsidiary that is not prohibited by and does not require consent under any of the Parity Lien Documents shall not be considered an insolvency or liquidation proceeding.

"*Intercreditor Agreements*" means the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement.

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P or Fitch, or an equivalent rating by any other Ratings Agency.

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents) and in each case with maturities not exceeding five years from the date of acquisition;

(2) securities that have an Investment Grade Rating;

(3) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (1), (2) or (4) of this definition, which fund may also hold immaterial amounts of cash pending investment and/or distribution; and

(4) instruments of the general type described in clauses (1), (2) or (3) above in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding five years from the date of acquisition.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the form of loans (including Guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel, relocation and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person, together with all items that are required to be classified as investments on a balance sheet prepared in accordance with GAAP in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. If the Issuer or any Restricted Subsidiary of the Issuer sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Issuer such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Issuer's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07(c) hereof. The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07(c) hereof. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value. Notwithstanding anything in this Indenture to the contrary, for purposes of Section 4.07 hereof:

(1) "Investments" shall include the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary of the Issuer, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(a) the Issuer's "Investment" in such Subsidiary at the time of such redesignation; *minus*

(b) the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Issuer or a direct or indirect parent of the Issuer (as evidenced by an Officer's Certificate).

"*Issue Date*" means April 1, 2021.

"*Issuer*" has the meaning assigned to such term in the introductory paragraphs hereto.

"*joint venture*" means any joint venture or similar arrangement (in each case, regardless of legal formation), including but not limited to collaboration arrangements, profit sharing arrangements or other contractual arrangements.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, 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 UCC (or equivalent statutes) of any jurisdiction.

"*Long Derivative Instrument*" means a Derivative Instrument (i) the value of which generally increases, and/ or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"*Management Investor*" means any Person who is an officer or otherwise a member of management of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies on the Issue Date, immediately after giving effect to the Transactions.

"*Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of Capital Stock of the Issuer or any direct or indirect parent company of the Issuer on the date of declaration of the relevant dividend or making of any other Restricted Payment, as applicable, multiplied by (ii) the arithmetic mean of the closing prices per share of such Capital Stock on the New York Stock Exchange (or, if the primary listing of such Capital Stock is on another exchange, on such other exchange) for the 30 consecutive trading days immediately preceding such date.

"*Moody's*" means Moody's Investors Service, Inc.

"*Net Proceeds*" means the aggregate cash proceeds and Cash Equivalents received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed asset or other consideration received in any other non-cash form), net of the costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including, without limitation, legal, accounting and investment banking fees, discounts and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, Taxes paid or payable as a result of the Asset Sale (including by way of making Permitted Payments to Parent in respect of such Taxes), amounts applied to the repayment of principal, premium (if any) and interest on Indebtedness that is secured by the property or the assets that are the subject of such Asset Sale or that is otherwise required (other than pursuant to the penultimate paragraph of Section 4.10(b) hereof) to be paid as a result of such transaction, any costs associated with unwinding any related Hedging Obligations in connection with such transaction, and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"*Net Short*" means, with respect to a Holder or beneficial owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its Notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Company or any Guarantor immediately prior to such date of determination.

"*Non-Guarantor Subsidiary*" means any Restricted Subsidiary of the Issuer that is not a Guarantor.

"*Non-Recourse Debt*" means Indebtedness as to which neither the Issuer, nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than the pledge of the Equity Interests of any Unrestricted Subsidiaries or (b) is directly or indirectly liable as a guarantor or otherwise other than by virtue of a pledge or the Equity Interests of any Unrestricted Subsidiaries.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Note Documents*" means this Indenture, the Notes, the Note Guarantees, the Security Documents and the Intercreditor Agreements.

"*Note Guarantee*" means the Guarantee by each Guarantor of the Issuer's obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Notes Collateral Agent*" means Wilmington Trust, National Association, in its capacity as collateral agent for the Notes, together with its successors in such capacity.

"*Obligations*" means any principal, interest (including any interest, fees, expenses and other amounts accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees, expenses and other amounts are an allowed or allowable claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"*Offering Memorandum*" means the Issuer's offering memorandum, dated as of March 17, 2021.

"*Officer*" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, Senior Vice President or Vice President, the Treasurer, the Secretary or the Assistant Secretary (or any person serving the equivalent function of any of the foregoing) of a Person (or of any direct or indirect parent, general partner, managing member or sole member of such Person) or any individual designated as an "Officer" for purposes of this Indenture by the Board of Directors of such Person (or the Board of Directors of any direct or indirect parent, general partner, managing member or sole member of such Person).

"*Officer's Certificate*" means, with respect to any Person, a certificate signed on behalf of such Person or any direct or indirect parent of such Person by an Officer of such Person or such direct or indirect parent and delivered to the Trustee or the Notes Collateral Agent, as applicable, whom, solely in respect of the Officer's Certificate required by Section 4.04(a), must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements of Sections 13.02 and 13.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee and, that meets the requirements of Sections 13.02 and 13.03 hereof, if applicable. The counsel may be an employee of or counsel to the Issuer or any Subsidiary of the Issuer.

"*Pari Passu Intercreditor Agreement*" means (i) a Pari Passu Intercreditor Agreement substantially consistent with the form attached hereto as Exhibit F, as may be amended, restated, supplemented or replaced, in whole or in part, from time to time in accordance with this Indenture, or (ii) any replacement thereof or other intercreditor agreement that contains terms not materially less favorable to the Holders than the Intercreditor agreement referred to in clause (i).

"*Parity Lien*" means a Lien granted to the Notes Collateral Agent or other Parity Lien Representative under any Parity Lien Indebtedness for the benefit of the holders thereof, at any time, upon the Collateral to secure Parity Lien Obligations.

"*Parity Lien Documents*" means, collectively, this Indenture, the Notes, the Security Documents, the Pari Passu Intercreditor Agreement, the ABL Intercreditor Agreement and the indenture, credit agreement or other agreement governing other Parity Lien Indebtedness and the security documents related to the foregoing.

"*Parity Lien Indebtedness*" means:

(1) Indebtedness represented by the Notes initially issued by the Issuer under this Indenture on the Issue Date;

(2) any other Indebtedness of the Issuer or any Guarantor (including Additional Notes but, for the avoidance of doubt, excluding Priority Lien Obligations) that is intended by the Issuer to be secured equally and ratably with the Parity Lien Obligations by a Parity Lien that is permitted to be incurred and secured by a Parity Lien under this Indenture; *provided* that in the case of any Indebtedness referred to in this clause (3):

(a) on or before the date on which such Indebtedness is incurred by the Issuer or such Guarantor, such Indebtedness is designated by the Issuer, in accordance with the terms and conditions of the Pari Passu Intercreditor Agreement, as "Additional Second Lien Obligations" for the purposes of the Pari Passu Intercreditor Agreement; *provided* that no series of debt may be designated as both Parity Lien Indebtedness and Priority Lien Obligations; and

(b) the Parity Lien Representative of such Indebtedness becomes a party to the Intercreditor Agreements in accordance with the terms thereof; and

(3) guarantees by any Guarantor in respect of any of the Obligations described in the foregoing clauses (1) and (2).

"*Parity Lien Obligations*" means Parity Lien Indebtedness and all other Obligations in respect thereof.

"*Parity Lien Representative*" means any duly authorized representative of any holders of Parity Lien Obligations, which representative is named as such in a joinder agreement to the applicable ABL Documents.

"*Participant*" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"*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 and Cash Equivalents; *provided*, that any cash and Cash Equivalents received are applied in accordance with Section 4.10 hereof.

"*Permitted Business*" means any business that is the same as, or reasonably related, ancillary or complementary to, any of the businesses in which the Issuer and its Restricted Subsidiaries are engaged on the Issue Date.

"Permitted Holders" means (i) each of the Principals, (ii) any Management Investor, (iii) any Related Party of any of the foregoing persons, (iv) any Permitted Parent and (v) any "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided* that in the case of such "group" and without giving effect to the existence of such "group" or any other "group," (x) such Persons specified in clauses (i), (ii), (iii) or (iv) above, collectively, have beneficial ownership, directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent entities held by such "group" and (y) the Principals and their Related Parties collectively, do not have beneficial ownership, directly or indirectly, of a lesser percentage of the Voting Stock of the Issuer or any of its direct or indirect parent entities than any other Person that is a member of such "group" (without giving effect to any Voting Stock that may be deemed owned by such other Person pursuant to Rule 13d-3 or 13d-5 under the Exchange Act as a result of such "group"). Any person or group, together with its Affiliates, whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer or Alternate Offer is made or waived in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investments*" means:

(1) any Investment in the Issuer or in a Restricted Subsidiary of the Issuer (including in the Notes);

(2) any Investment in cash, Cash Equivalents or Investment Grade Securities;

(3) any Investment by the Issuer or any Restricted Subsidiary of the Issuer in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Issuer; or

(b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made in compliance with Section 4.10 hereof;

(5) any acquisition of assets or Capital Stock solely in exchange for, or out of the proceeds of, the issuance of Equity Interests (other than Disqualified Stock) of the Issuer or of any direct or indirect parent of the Issuer;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Issuer or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; (B) litigation, arbitration or other disputes; or (C) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to a secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Investments represented by Hedging Obligations;

(8) loans or advances to employees made in the ordinary course of business of the Issuer or any Subsidiary of the Issuer in an aggregate principal amount not to exceed the greater of (x) $25.0 million and (y) 7.50% of Consolidated EBITDA at any one time outstanding;

(9) repurchases of the Notes;

(10) any guarantee of Indebtedness permitted to be incurred under Section 4.09 hereof;

(11) any Investment existing on, or made pursuant to binding commitments existing on the Issue Date and any Investment consisting of an extension, modification, renewal, replacement, refunding or refinancing of any investment existing on, or made pursuant to a binding commitment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted under this Indenture;

(12) Investments acquired after the Issue Date as a result of the acquisition by the Issuer or any Restricted Subsidiary of the Issuer of another Person, including by way of a merger, amalgamation, Division or consolidation with or into the Issuer or any of its Restricted Subsidiaries in a transaction that is not prohibited by Section 5.01 hereof after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation, Division or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(13) Investments by the Issuer or its Restricted Subsidiaries consisting of deposits, prepayment and other credits to suppliers or landlords made in the ordinary course of business;

(14) guaranties made in the ordinary course of business of (a) obligations owed to landlords, suppliers, customers, franchisees and licensees of the Issuer or its Subsidiaries and (b) operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness;

(15) any Investment acquired by the Issuer or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Issuer of such other Investment or accounts receivable, or (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(16) loans and advances to officers, directors and employees for business-related travel expenses, moving and relocation expenses and other similar expenses, in each case incurred in the ordinary course of business;

(17) Investments consisting of the licensing, sublicensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(18) Investments in joint ventures of the Issuer or any of its Restricted Subsidiaries in an aggregate amount, taken together with all other Investments made pursuant to this clause (18) that are at the time outstanding, not to exceed the greater of (x) $100.0 million and (y) 30.0% of Consolidated EBITDA, at any one time outstanding;

(19) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses of intellectual property or leases, in each case, in the ordinary course of business;

(20) Investments by the Issuer or a Restricted Subsidiary of the Issuer in a Securitization Entity or any Investments by a Securitization Entity in any other Person in connection with a Qualified Securitization Transaction, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Transaction or any related Indebtedness; *provided*, *however*, that such Investment is solely in the form of a Purchase Money Note, equity interests or contribution of additional accounts receivable generated by the Issuer or any of its Subsidiaries;

(21) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with Section 4.11(b) hereof (except transactions described in clauses (3), (6), (10), (11), (13) and (19) of Section 4.11(b) hereof);

(22) any acquisition of assets or Capital Stock solely in exchange for, or out of the net cash proceeds received from, the issuance of Equity Interests (other than Disqualified Stock) of the Issuer or any contribution to the common equity of the Issuer; *provided* that the amount of any such net cash proceeds that are utilized for any such Investment pursuant to this clause (22) will be excluded from Section 4.07(a)(z)(B);

(23) other Investments in any Person having an aggregate Fair Market Value, when taken together with all other Investments made pursuant to this clause (23) that are at the time outstanding not to exceed the greater of (x) $200.0 million and (y) 60.0% of Consolidated EBITDA, at any one time outstanding; *provided*, *however*, that if any Investment pursuant to this clause (23) is made in any Person that is not a Restricted Subsidiary of the Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Issuer after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (23) for so long as such Person continues to be a Restricted Subsidiary of the Issuer;

(24) any Investment by the Issuer or a Restricted Subsidiary of the Issuer in a Person engaged in a Permitted Business (other than an Investment in an Unrestricted Subsidiary) having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (24) that are at the time outstanding, not to exceed the greater of (x) $150.0 million and (y) 45.0% of Consolidated EBITDA, at any one time outstanding; *provided*, *however*, that if any Investment pursuant to this clause (24) is made in any Person that is not a Restricted Subsidiary of the Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Issuer after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (24) for so long as such Person continues to be a Restricted Subsidiary of the Issuer; and

(25) Investments in Unrestricted Subsidiaries having an aggregate Fair Market Value, when taken together with all other Investments made pursuant to this clause (25) that are at that time outstanding not to exceed the greater of (x) $125.0 million and (y) 37.5% of Consolidated EBITDA, at any one time outstanding; *provided* that in no event shall any material portion of the intellectual property of the Issuer and its Restricted Subsidiaries be transferred to any Unrestricted Subsidiary pursuant to this clause (25).

For purposes of this definition, in the event that a proposed Investment (or portion thereof) meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (25) above, or is otherwise entitled to be incurred or made pursuant to Section 4.07, the Issuer will be entitled to classify, or later reclassify, such Investment (or portion thereof) in one or more of such categories set forth above or pursuant to Section 4.07.

"*Permitted Liens*" means:

(1) Liens on assets of the Issuer or any of its Restricted Subsidiaries securing Indebtedness and other Obligations that were incurred pursuant to clause (1), (8), (13), (15) or (22) of Section 4.09(b) hereof; *provided* in the case of clause (13) such Liens securing Indebtedness incurred pursuant to such clause (13) shall only be permitted under this clause (1) if, on a Pro Forma Basis after giving effect to such incurrence, the Consolidated Senior Secured Debt Ratio either (x) does not exceed 4.75 to 1.00 or (y) would be no greater than immediately prior to such incurrence;

(2) Liens in favor of the Issuer or Guarantors, if any;

(3) Liens on assets, property or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary of the Issuer or is merged or amalgamated with or into or consolidated with the Issuer or a Restricted Subsidiary of the Issuer; *provided* that such Liens (a) were in existence prior to the contemplation of such Person becoming a Restricted Subsidiary of the Issuer or such merger or consolidation and (b) do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary of the Issuer or the surviving entity of any such merger, amalgamation or consolidation;

(4) Liens on assets or on property (including Capital Stock) existing at the time of acquisition of the assets or property by the Issuer or any Subsidiary of the Issuer; *provided* that such Liens (a) were in existence prior to such acquisition and not incurred in contemplation of, such acquisition and (b) do not extend to any other assets of the Issuer or any of its Subsidiaries;

(5) Liens, pledges or deposits to secure the performance of bids, trade contracts, leases, statutory obligations, insurance, judgments, surety or appeal bonds, workers' compensation obligations, performance bonds, unemployment insurance obligations, social security obligations, or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations);

(6) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by Section 4.09(b)(4) hereof covering only the assets acquired with or financed by such Indebtedness; provided that individual financings of property or equipment provided by one lender may be cross collateralized to other financings of property or equipment provided by such lender;

(7) (a) Liens existing on the Issue Date (other than with respect to the ABL Credit Agreement) and (b) Liens securing the Notes issued on the Issue Date and the Note Guarantees;

(8) Liens for Taxes, assessments or governmental charges or claims that are not yet overdue for 30 days or not yet due and payable or that are being contested in good faith by appropriate proceedings; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP (or in conformity with generally accepted accounting principles in the jurisdiction in which the Issuer or Restricted Subsidiary is organized) has been made therefor;

(9) Liens imposed by law, such as carriers', warehousemen's, materialmen's, landlord's, workmen's, repairmen's and mechanics' Liens, in each case, incurred in the ordinary course of business;

(10) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(11) [reserved];

(12) Liens to secure any Refinancing Indebtedness permitted to be incurred under this Indenture; *provided*, *however*, that

(a) the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof);

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount (or accreted amount, if applicable, or, if greater, committed amount) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged with such Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge; and

(c) the new Lien has no greater priority relative to the Notes and the Note Guarantees and the holders of such Refinancing Indebtedness secured by the new Lien have no greater intercreditor rights relative to the Notes and the Note Guarantees than the original Lien and related Indebtedness;

(13) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(14) Liens arising from, or from the filing of UCC financing statements in connection with, operating leases;

(15) bankers' Liens, rights of set-off, Liens arising out of judgments or awards not constituting an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made to the extent required by GAAP;

(16) Liens on Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

(17) Liens on specific items of inventory or other goods and the proceeds thereof (including documents, instruments, accounts, chattel paper, letter of credit rights, general intangibles, supporting obligations, and claims under insurance policies relating thereto) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(18) leases, subleases, licenses or sublicenses (including licenses or sublicenses of software and other technology or intellectual property) in the ordinary course of business or otherwise not materially interfering with the conduct of the business of the Issuer or any of its Restricted Subsidiaries;

(19) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(20) statutory, common law or contractual Liens of creditor depository institutions or institutions holding securities accounts (including the right of set-off or similar rights and remedies);

(21) customary Liens granted in favor of a trustee (including the Trustee) to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to which Indebtedness not prohibited by this Indenture is issued (including this Indenture);

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods;

(23) (a) Liens on assets or the Capital Stock of Non-Guarantor Subsidiaries securing Indebtedness of Non-Guarantor Subsidiaries permitted to be incurred in accordance with Section 4.09 hereof and (b) Liens on the Capital Stock of Unrestricted Subsidiaries;

(24) Liens securing Hedging Obligations entered into in the ordinary course of business and not for speculative purposes; *provided* that such Hedging Obligations are permitted to be incurred under this Indenture;

(25) Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of such assets otherwise permitted under this Indenture for so long as such agreements are in effect;

(26) other Liens with respect to obligations that do not exceed the greater of (x) $200.0 million and (y) 60.0% of Consolidated EBITDA at any one time outstanding;

(27) Liens securing Indebtedness or other Obligations of the Issuer or a Restricted Subsidiary of the Issuer owing to the Issuer or another Restricted Subsidiary of the Issuer permitted to be incurred in accordance with Section 4.09 hereof;

(28) leases and subleases of real property that do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries;

(29) Liens on accounts receivable and related assets of the type specified in the definition of "Securitization Transaction" incurred in connection with a Qualified Securitization Transaction;

(30) deposits made in the ordinary course of business to secure liability to insurance carriers;

(31) Liens incurred to secure any Cash Management Services and Treasury Management Arrangement incurred in the ordinary course of business;

(32) Liens solely on any cash earnest money deposits made by the Issuer or any Restricted Subsidiary of the Issuer in connection with any letter of intent or purchase agreement permitted under this Indenture;

(33) any encumbrances or restrictions (including, without limitation, put and call agreements) with respect to the Capital Stock of any joint venture pursuant to the agreement evidencing such joint venture;

(34) Liens that may arise on inventory or equipment in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than the Issuer or its Restricted Subsidiaries;

(35) Liens securing Indebtedness, Disqualified Stock or preferred stock permitted to be incurred pursuant to Section 4.09 hereof if at the time of any incurrence of such Indebtedness and after giving pro forma effect thereto, the Consolidated Senior Secured Debt Ratio does not exceed 4.75 to 1.00;

(36) Liens to secure assets pledged under Floorplan Indebtedness (which Liens, for the avoidance of doubt, shall be limited to Liens on assets subject to the Floorplan Indebtedness and shall not extend to any Collateral); and

(37) Liens on cash proceeds of Indebtedness (and on the related escrow accounts) in connection with the issuance of such Indebtedness into (and pending the release from) a customary escrow arrangement, to the extent such Indebtedness is incurred in compliance with Section 4.09 hereof.

provided that (i) any Liens on the Collateral incurred pursuant to clauses (1) (solely with respect to Liens securing Indebtedness Incurred pursuant to the reference to clause (13) of the definition of "Permitted Debt" set forth therein), (26) or (35) above shall be (x) pari passu or junior to the Liens on the Collateral securing the Notes, (y) (A) if such Liens are pari passu with the Liens on the Collateral securing the Notes, the representative of the obligations secured thereby (such obligations, Permitted Additional Pari Passu Obligations) executes a joinder agreement to the Security Agreement and any other applicable Security Documents in the form attached thereto agreeing to be bound thereby and (B) the Issuer has designated such Indebtedness as Permitted Additional Pari Passu Obligations under the Security Agreement and any other applicable Security Documents, and (z) if such Liens are secured on the Collateral on a junior basis to the Liens on the Collateral securing the notes, the representative of the obligations secured thereby enters into intercreditor arrangements that subordinate the Liens on the Collateral securing such Indebtedness on market terms at the time entered into, as certified by the Issuer in good faith, (ii) Liens on assets not constituting Collateral shall not be permitted pursuant to clauses (1) (solely with respect to Liens securing Indebtedness Incurred pursuant to the reference to clause (13) of the definition of "Permitted Debt" set forth therein) and (35) above and (iii) in the case of any Liens on Collateral pursuant to clause (1) above, such Liens shall be subject to the Intercreditor Agreements, Pari Passu Intercreditor or another intercreditor agreement that is substantially similar thereto, as applicable.

For purposes of determining compliance with this definition, (x) Permitted Liens need not be incurred solely by reference to one category of Permitted Liens described above but are permitted to be incurred in part under any combination thereof and (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more categories of Permitted Liens described above, the Issuer shall, in its sole discretion, classify (or later reclassify) such item of Permitted Liens (or any portion thereof) in any manner that complies with this definition and (z) in the event that a portion of Indebtedness secured by a Lien that is incurred after the Issue Date could be classified as secured in part pursuant to clause (1) or (35) above (giving effect to the incurrence of such portion of such Indebtedness), the Issuer, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (35) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition; *provided, however,* that Indebtedness under any ABL Credit Agreement on the Issue Date shall be deemed secured under clause (1) of the definition of Permitted Liens above on the Issue Date and thereafter may not be reclassified.

"*Permitted Parent*" means any (a) direct or indirect parent of the Issuer formed not in connection with, or in contemplation of, a transaction that, assuming such parent was not so formed, after giving effect thereto would constitute a Change of Control, (b) any direct or indirect parent of the Issuer formed in connection with an underwritten public Equity Offering and (c) any Public Company (or Wholly Owned Subsidiary of such Public Company) to the extent and until such time as any Person or group (other than a Permitted Holder under clause (i), (ii), (iii) or (v) of the definition thereof) is deemed to be or become a beneficial owner of Voting Stock of such Public Company representing more than 50.0% of the total voting power of the Voting Stock of such Public Company.

"Permitted Payments to Parent" means the declaration and payment of dividends or other payments to, or the making of loans to, any direct or indirect parent of the Issuer in amounts required for any direct or indirect parent of the Issuer (and, in the case of clause (3) below, its direct or indirect members), to pay, in each case without duplication:

(1) general corporate operating and overhead costs and expenses (including, without limitation, expenses related to reporting obligations and any franchise and similar Taxes, and other fees and expenses, required to maintain their corporate existence) of any direct or indirect parent of the Issuer to the extent such costs and expenses are reasonably attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(2) reasonable fees and expenses (other than to Affiliates of the Issuer) incurred in connection with any unsuccessful debt or equity offering or other financing transaction by such direct or indirect parent of the Issuer;

(3) with respect to any taxable period ending after the Issue Date for which the Issuer and/or any of its Subsidiaries are members of a consolidated, combined or similar income tax group for U.S. federal and/or applicable state, local or foreign income tax purposes of which a direct or indirect parent of the Issuer is the common parent or other applicable taxpayer for the group (a "*Tax Group*"), the portion of any U.S. federal, state, local, and/or foreign income and similar Taxes (including any alternative minimum taxes) of such Tax Group that is attributable to the taxable income of the Issuer and/or its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries for such purpose, in amounts required to pay any such Taxes that are attributable to the taxable income of such Unrestricted Subsidiaries; *provided* that the aggregate amount of such payments with respect to such period (regardless of when paid) shall not exceed the aggregate amount of such Taxes that the Issuer and its applicable Restricted Subsidiaries (and, subject to the limitation described above, any applicable Unrestricted Subsidiaries of the Issuer) would have been required to pay with respect to such period were such entities stand-alone corporate taxpayers or a stand-alone corporate Tax Group for all applicable periods ending after the Issue Date;

(4) fees and expenses owed by the Issuer, any direct or indirect parent of the Issuer, as the case may be, or the Issuer's Restricted Subsidiaries to Affiliates, in each case, to the extent permitted by Section 4.11(b)(7) hereof;

(5) customary salary, bonus, severance, indemnification obligations and other benefits payable to officers and employees of such direct or indirect parent company of the Issuer to the extent such salaries, bonuses, severance, indemnification obligations and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(6) the payment of customary transaction fees and expenses payable in accordance with Section 4.11(b)(20); and

(7) fees and expenses incurred by the Issuer or any direct or indirect parent of the Issuer related to the performance of its obligations under this Indenture and similar obligations under any Credit Agreement.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Premises*" means owned real properties required to be subject to a mortgage lien that form a portion of the Collateral (including all after-acquired real property that is not an Excluded Asset).

"*Principals*" means (1) the Sponsor and (2) one or more investment funds advised, managed or controlled by Sponsor and, in each case (whether individually or as a group), their Affiliates, but not initially, however, any portfolio company of any of the foregoing.

"*Priority Lien Obligations*" means Indebtedness outstanding under the ABL Credit Agreement and all other Obligations in respect thereof.

"*Private Placement Legend*" means the legend set forth in Section 2.06(g)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Pro Forma Basis*" means, with respect to the calculation of any test, financial ratio, basket or covenant under this Indenture, including the Consolidated Senior Secured Debt Ratio, the Consolidated Total Debt Ratio and the Fixed Charge Coverage Ratio and the calculation of Consolidated EBITDA, Consolidated Total Indebtedness and Total Assets, of any Person and its Restricted Subsidiaries, as of any date, that pro forma effect will be given to the Transactions, any acquisition, merger, amalgamation, consolidation, Investment, any issuance, incurrence, assumption or repayment or redemption of Indebtedness (including Indebtedness issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated), any issuance or redemption of preferred stock or Disqualified Stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change (including the entry into any material contract or arrangement) or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of such Person being used to calculate such test, financial ratio, basket or covenant (the "*Reference Period*"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary of the subject Person or was merged or consolidated with or into the subject Person or any other Restricted Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

For purposes of making any computation referred to above:

(1) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligations have a remaining term in excess of 12 months);

(2) interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Issuer or a direct or indirect parent company of the Issuer to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP;

(3) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, an eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate;

(4) interest on any Indebtedness under a revolving credit facility or a Qualified Securitization Transaction computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; and

(5) to the extent not already covered above, any such calculation may include adjustments calculated in accordance with Regulation S-X under the Securities Act.

Any pro forma calculation may include, without limitation, (1) adjustments calculated in accordance with Regulation S-X under the Securities Act and (2) adjustments calculated to give effect to any Pro Forma Cost Savings; *provided* that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition of "Pro Forma Cost Savings" or otherwise added to Consolidated Net Income or Consolidated EBITDA but excluding the Specified Permitted Adjustments) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of "Pro Forma Cost Savings".

"*Pro Forma Cost Savings*" means, without duplication of any amounts referenced in the definition of "Pro Forma Basis," an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Issuer (or any successor thereto) or any Restricted Subsidiary within 24 months of, the date of such pro forma calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such action; *provided* that (i) such cost savings, expense reductions, operating improvements and synergies are reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Issuer, any director or indirect parent of the Issuer or any Qualified Reporting Subsidiary (or any successor thereto), to the extent providing the report required by Section 4.03 hereof and are reasonably anticipated to be realized within 24 months after the date of such pro forma calculation or after the consummation of any change that is expected to result in such cost savings, operating expense reductions, operating improvements or synergies, (ii) the aggregate amount added in respect of this definition of "Pro Forma Cost Savings" shall not exceed with respect to any four quarter period, 25% of Consolidated EBITDA for such period (calculated after giving effect to any giving effect to any such adjustments and (iii) no cost savings, expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period.

"*Public Company*" means any Person with a class or series of Voting Stock that is traded on a stock exchange or in the over-the-counter market.

"Public Company Costs" means, as to any Person, costs relating to compliance with the provisions of the Securities Act and the Exchange Act, as applicable to companies with equity securities held by the public, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, the rules of national securities exchange companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising solely by virtue of listing of such Person's equity securities on a national securities exchange.

"*Purchase Money Note*" means a promissory note of a Securitization Entity evidencing a line of credit, which may be irrevocable, from the Issuer or any of its Subsidiaries to a Securitization Entity in connection with a Qualified Securitization Transaction, which note is intended to finance that portion of the purchase price that is not paid by cash or a contribution of equity.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Securitization Transaction" means any Securitization Transaction of a Securitization Entity that meets the following conditions:

(1) the Board of Directors of the Issuer or any direct or indirect parent of the Issuer shall have determined in good faith that such Qualified Securitization Transaction (including financing terms, covenants, termination events or other provisions) is in the aggregate economically fair and reasonable to the Issuer and the Securitization Entity;

(2) all sales of accounts receivable and related assets to the Securitization Entity are made at Fair Market Value (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings; and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings.

Notwithstanding anything to the contrary, the grant of a security interest in any accounts receivable of the Issuer or any of its Restricted Subsidiaries (other than a Securitization Entity) to secure Indebtedness or other Obligations under the ABL Credit Agreement shall not be deemed a Qualified Securitization Transaction.

"*Qualifying Equity Interests*" means Equity Interests of the Issuer other than Disqualified Stock.

"*Ratings Agency*" means (1) each of Moody's and S&P and (2) if Moody's or S&P ceases to rate the Notes for reasons outside of the Issuer's control, a "nationally recognized statistical rating organization" within the meaning of Section 3 under the Exchange Act selected by the Issuer or any direct or indirect parent of the Issuer as a replacement agency for Moody's or S&P, as the case may be.

"*Regulated Bank"* means a commercial bank with a consolidated combined capital surplus of at least $5,000,000,000 that is (i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation; (ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913; (iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors under 12 CFR part 211; (iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (iii); or (v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

"*Regulated Subsidiary*" means any entity that is subject to United States or foreign federal, state or local regulation over its ability to incur Indebtedness or create Liens (including Liens with respect to its own Capital Stock).

"*Regulation S*" means Regulation S promulgated under the Securities Act.

"*Regulation S Global Note*" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as appropriate.

"*Regulation S Permanent Global Note*" means a permanent Global Note in the form of Exhibit A hereto bearing the Global Note Legend, the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note exchanged therefor upon and after expiration of the Restricted Period.

"*Regulation S Temporary Global Note*" means a temporary Global Note in the form of Exhibit A hereto bearing the Global Note Legend, Private Placement Legend and Regulation S Temporary Global Legend deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"*Regulation S Temporary Global Note Legend*" means the legend set forth in Section 2.06(g)(3) hereof to be placed on all Regulation S Temporary Global Notes.

"*Related Business Assets*" means assets (other than cash or Cash Equivalents) used or useful in a Permitted Business and not classified as current assets under GAAP; *provided* that assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary will not qualify as Related Business Assets if they consist of securities of a Person, unless upon receipt of such securities such Person becomes a Restricted Subsidiary of the Issuer.

"*Related Party*" means (a) with respect to the Sponsor, (i) any investment fund controlled by or under common control with the Sponsor, any officer or director of the foregoing persons, or any entity controlled by any of the foregoing persons and (ii) any spouse or lineal descendant (including by adoption or stepchildren) of the officers and directors referred to in clause (a)(i); and (b) with respect to any officer of the Issuer or its Subsidiaries, (i) any spouse or lineal descendant (including by adoption and stepchildren) of such officer and (ii) any trust, corporation or partnership or other entity, in each case to the extent not an operating company, of which an 80% or more controlling interest is held by the beneficiaries, stockholders, partners or owners who are the officer, any of the persons described in clause (b)(i) above or any combination of these identified relationships.

"*Rental Equipment"* means utility equipment, vehicles and other equipment that is determined in the good faith of the Issuer to be held for the purpose of renting such equipment and vehicles to customers of the Issuer and its Restricted Subsidiaries.

"*Responsible Officer*" means, when used with respect to the Trustee or the Notes Collateral Agent, as applicable, any officer within the corporate trust department of the Trustee or the Notes Collateral Agent, as applicable, who shall have direct responsibility for the administration of this Indenture, and any other officer of the Trustee or the Notes Collateral Agent, as applicable, to whom any corporate trust matter relating to this Indenture is referred because of such officer's knowledge of and familiarity with the particular subject.

"*Restricted Definitive Note*" means a Definitive Note bearing the Private Placement Legend.

"*Restricted Global Note*" means a Global Note bearing the Private Placement Legend.

"*Restricted Investment*" means an Investment other than a Permitted Investment.

"*Restricted Period*" means the 40-day distribution compliance period as defined in Regulation S, which period shall terminate on May 11, 2021 with respect to Notes issued on the Issue Date.

"*Restricted Subsidiary*" of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Rule 903*" means Rule 903 promulgated under the Securities Act.

"*Rule 904*" means Rule 904 promulgated under the Securities Act.

"*S&P*" means Standard & Poor's Ratings Group.

"*Sale/Leaseback Transaction*" means any arrangement relating to property now owned or hereafter acquired by the Issuer or any of its Restricted Subsidiaries whereby the Issuer or a Restricted Subsidiary of the Issuer transfers such property to a Person and the Issuer or such Restricted Subsidiary of the Issuer leases it from such Person, other than leases between the Issuer and a Restricted Subsidiary of the Issuer or between the Issuer's Restricted Subsidiaries.

"*Screened Affiliate*" means any Affiliate of a holder (i) that makes investment decisions independently from such holder and any other Affiliate of such holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such holder and any other Affiliate of such holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Issuer or its Subsidiaries, (iii) whose investment policies are not directed by such holder or any other Affiliate of such holder that is acting in concert with such holder in connection with its investment in the Notes, and (iv) whose investment decisions are not influenced by the investment decisions of such holder or any other Affiliate of such holder that is acting in concert with such holders in connection with its investment in the Notes.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien other than Indebtedness with respect to Cash Management Services or a Treasury Management Arrangement.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended.

"*Securitization Entity*" means a Wholly Owned Restricted Subsidiary of the Issuer (or another Person formed for the purposes of engaging in a Qualified Securitization Transaction with the Issuer in which the Issuer or any Restricted Subsidiary of the Issuer makes an Investment and to which the Issuer or any Restricted Subsidiary of the Issuer transfers accounts receivable and related assets) which is designated by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer (as provided below) as a Securitization Entity and engages in no activities other than in connection with the financing of accounts receivable of the Issuer and its Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (a) is guaranteed by the Issuer or any of its Subsidiaries (other than the Securitization Entity) (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (b) is recourse to or obligates the Issuer or any of its Subsidiaries (other than the Securitization Entity) in any way other than pursuant to Standard Securitization Undertakings or (c) subjects any asset of the Issuer or any of its Subsidiaries (other than the Securitization Entity), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Issuer nor any of its Subsidiaries has any material contract, agreement, arrangement or understanding other than on terms no less favorable to the Issuer or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Issuer; and

(3) to which neither the Issuer nor any of its Subsidiaries has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any designation by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolutions of the Board of Directors of the Issuer or such direct or indirect parent of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*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 paid to a Person that is not a Restricted Subsidiary of the Issuer or any of its Restricted Subsidiaries in connection with, a Qualified Securitization Transaction.

"*Securitization Repurchase Obligation*" means any obligation of a seller of receivables in a Qualified Securitization Transaction to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Securitization Transaction*" means any transaction or series of transactions that may be entered into by the Issuer, any of its Restricted Subsidiaries or a Securitization Entity pursuant to which the Issuer, such Restricted Subsidiary or such Securitization Entity may sell, convey or otherwise transfer to, or grant a security interest in for the benefit of, (1) a Securitization Entity, the Issuer or any of its Restricted Subsidiaries which subsequently transfers to a Securitization Entity (in the case of a transfer by the Issuer or such Restricted Subsidiary) and (2) any other Person (in the case of transfer by a Securitization Entity), any accounts receivable (whether now existing or arising or acquired in the future) of the Issuer or any of its Restricted Subsidiaries which arose in the ordinary course of business of the Issuer or such Restricted Subsidiary, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets (including contract rights) which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable.

"*Security Agreement*" means that certain Second Lien Notes Security Agreement, dated the Issue Date, by and among the Grantors party thereto and the Notes Collateral Agent, as may be amended, restated, supplemented, waived, renewed or otherwise modified from time to time.

"*Security Documents*" means the Intercreditor Agreements, each joinder or amendment to the Intercreditor Agreements, the Security Agreement, all other security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deeds of trust, security deeds, deeds to secure debt, deeds of trust, hypothecs, hypothecations, collateral agency agreements, debentures or other instruments or other pledges, grants or transfers for security or agreements related thereto executed and delivered by the Issuer or any Guarantor creating or perfecting (or purporting to create or perfect) a Lien upon Collateral (including, without limitation, financing statements under the UCC) in favor of the Notes Collateral Agent on behalf of the Trustee and the Holders of the Notes to secure the Notes and the Note Guarantees and the other Obligations under this Indenture, in each case, as amended, modified, renewed, restated, supplemented or replaced, in whole or in part, from time to time, in accordance with its terms and the provisions described in Article 12 hereof.

"*Short Derivative Instrument*" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" as deemed in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of this Indenture.

"*Specified Permitted Adjustments*" means all adjustments of the type or nature identified in the calculations of "Adjusted EBITDA" and "Pro Forma Adjusted EBITDA" as set forth in the "Summary—Summary Historical Consolidated and Unaudited Pro Forma Condensed Combined Financial Information and Other Data" in the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to the Reference Period (it being understood that such adjustments shall be calculated net of the amount of actual benefits realized or expected to be realized during Reference Period that are otherwise included in the calculation of Consolidated EBITDA).

"*Sponsor*" means Platinum Equity Advisors, LLC, Capitol Acquisition Founder IV, LLC, The Blackstone Group Inc. and Energy Capital Partners III, LP and, in each case, its Affiliates (excluding any operating portfolio company thereof).

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Issuer or any of its Subsidiaries which the Issuer has determined in good faith to be customary in a Securitization Transaction including, without limitation, those relating to the servicing of the assets of a Securitization Entity, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness and will not include any Contingent Obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means (a) with respect to the Issuer, any Indebtedness of the Issuer which is by its terms expressly subordinated in right of payment to the Notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms expressly subordinated in right of payment to its Note Guarantee.

"*Subsidiary*" means, with respect to any specified 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% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof);

(2) any partnership, joint venture or limited liability company or similar entity of which (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and 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 interests or otherwise, and (b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity; and

(3) any Person that is consolidated in the consolidated financial statements of the specified Person in accordance with GAAP.

"*Subsidiary Guarantor*" means any Guarantor that is a Restricted Subsidiary of the Issuer.

"*Taxes*" means any present or future tax, levy, impost, assessment or other government charge (including penalties, interest, additions to tax and any other liabilities related thereto) imposed or levied by or on behalf of a Taxing Authority.

"*Taxing Authority*" means any government or any political subdivision or territory or possession of any government or any authority or agency therein or thereof having power to tax.

"*Total Assets*" means the total consolidated assets of the Issuer and its Restricted Subsidiaries as set forth on the most recent internally available consolidated balance sheet of the Issuer and its Restricted Subsidiaries.

"*Transactions*" means, collectively, the Acquisition, the Rollover (as defined in the Offering Memorandum), the Subscription (as defined in the Offering Memorandum), the Supplemental Equity Financing (as defined in the Offering Memorandum) and the Debt Financing (as defined in the Offering Memorandum).

"*Treasury Management Arrangement*" means any agreement or other arrangement governing the provision of treasury or Cash Management Services, including deposit accounts, overdraft, credit or debit card, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"*Treasury Rate*" means, as of any redemption date, the yield to maturity as of the earlier of (a) such redemption date or (b) the date on which such series of Notes are defeased or satisfied and discharged, of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to April 15, 2024; *provided*, *however*, that if the period from the redemption date to April 15, 2024 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trust Indenture Act*" or "*TIA*" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb), as in effect on the Issue Date and, to the extent required by law, as amended.

"*Trustee*" means Wilmington Trust, National Association, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*UCC*" means the Uniform Commercial Code (or any successor statute) as in effect from time to time in the relevant jurisdiction.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Subsidiary*" means any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer as an Unrestricted Subsidiary pursuant to a resolution of such Board of Directors, and any Subsidiary of an Unrestricted Subsidiary, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary of the Issuer (other than any Subsidiary of the Subsidiary to be so designated) unless the terms of any such agreement, contract, arrangement or understanding are not materially less favorable to the Issuer or such Restricted Subsidiary of the Issuer than those that might have been obtained at the time of any such agreement, contract, arrangement or understanding than those that could have been obtained from Persons who are not Affiliates of the Issuer;

(3) is a Person with respect to which neither the Issuer nor any of its Restricted Subsidiaries (other than any Subsidiary of the Subsidiary to be so designated) has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Issuer or any of its Restricted Subsidiaries (other than any Subsidiary of the Subsidiary to be so designated).

Any designation by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer shall be evidenced to the Trustee by delivering to the Trustee a certified copy of the resolutions of such Board of Directors giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; *by*

(2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Restricted Subsidiary*" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"*Wholly Owned Subsidiary*" means, with respect to any Person, a direct or indirect Subsidiary of such Person, 100% of the outstanding Capital Stock or other ownership interest of which (other than 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) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

Section 1.02 *Other Definitions.*

Term	Defined in Section
"Acquired Rental Assets"	1.01

"Acquisition"	Preamble
"Acquisition Agreement"	Preamble
"Action"	12.02
"Affiliate Transaction"	4.11
"Alternate Offer"	4.14
"Asset Sale Offer"	3.09
"Authentication Order"	2.02
"Change of Control Offer".	4.14
"Change of Control Payment"	4.14
"Change of Control Payment Date"	4.14
"Covenant Defeasance"	8.03
"Custom Truck"	Preamble
"Directing Holder"	6.02
"DTC"	2.03
"Electronic Record"	13.11
"Electronic Signature"	13.11
"Event of Default"	6.01
"Excess Proceeds"	4.10
"Grower Tested Committed Amount"	4.09
"incur"	4.09
"Initial Default"	6.04
"Interest Payment Date"	2.01
"Legal Defeasance"	8.02
"Noteholder Direction"	6.02
"Offer Amount"	3.09
"Offer Period"	3.09
"Offer Purchase Date"	3.09
"Paying Agent"	2.03
"Payment Default"	6.01(4)(a)
"Performance References"	1.01
"Permitted Debt"	4.09
"Position Representation"	6.02
"Qualified Reporting Subsidiary"	4.03
"Ratio Debt"	4.09
"Refinance"	4.09
"Refinancing Indebtedness"	4.09
"Registrar"	2.03
"Restricted Payments"	4.07
"Retained Declined Proceeds"	4.10
"Reversion Date"	4.19
"Specified Courts"	13.07
"Surviving Entity"	5.01
"Suspended Covenants"	4.19
"Suspension Period"	4.19
"Tax Group"	1.01
"Testing Party"	1.04
"Transaction Agreement Date"	1.04
"Verification Covenant"	6.02

Section 1.03 *Rules of Construction.*

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) the term "including" is not limiting;

(5) words in the singular include the plural, and in the plural include the singular;

(6) "will" shall be interpreted to express a command;

(7) provisions apply to successive events and transactions;

(8) references to sections of or rules under the Exchange Act and the Securities Act will be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time; and

(9) unless otherwise provided herein or in any other related document, the words "execute", "execution", "signed", and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any other related document or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and 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 in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest 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, and any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything herein to the contrary, neither the Trustee nor the Notes Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Notes Collateral Agent pursuant to reasonable procedures approved by the Trustee or the Notes Collateral Agent, as applicable. The Issuer agrees to assume all risks arising out of the use of digital signatures and electronic methods to submit communications to the Trustee or the Notes Collateral Agent, including, without limitation, the risk of the Trustee or the Notes Collateral Agent acting on unauthorized instruction and the risk of interception and misuse by third parties.

Section 1.04 *Measuring Compliance*.

(a) With respect to any (x) Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction and (y) repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock with respect to which a notice of repayment (or similar notice), which may be conditional, has been delivered, in each case for purposes of determining:

(1) whether any Indebtedness (including Acquired Debt) that is being incurred or Disqualified Stock or preferred stock being issued in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock is permitted to be incurred in compliance with Section 4.09;

(2) whether any Lien being incurred in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock or to secure any such Indebtedness is permitted to be incurred in accordance with Section 4.12 or the definition of "Permitted Liens";

(3) whether any other transaction undertaken or proposed to be undertaken in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction, or repayment, repurchase or refinancing of Indebtedness; Disqualified Stock or preferred stock complies with the covenants or agreements contained in this Indenture or the Notes;

(4) any calculation of the ratios, baskets or financial metrics, including Fixed Charge Coverage Ratio, Consolidated Total Debt Ratio, Consolidated Senior Secured Debt Ratio, Consolidated Net Income, Consolidated EBITDA, Consolidated Total Indebtedness, Total Assets and/or Pro Forma Cost Savings and, whether a Default or Event of Default exists in connection with the foregoing; and

(5) whether any condition precedent to the incurrence of Indebtedness (including Acquired Debt) or Liens, or issuance of Disqualified Stock or preferred stock, in each case that is being incurred in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock is satisfied,

at the option of the Issuer, any of its Restricted Subsidiaries, any direct or indirect parent of the Issuer, any successor entity of any of the foregoing or a third party (the "*Testing Party*"), the date of declaration of such Restricted Payment, the date that the definitive agreement for such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction is entered into, the date a public announcement of such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or the date of such notice, which may be conditional, of such repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock is given to the holders of such Indebtedness, Disqualified Stock or preferred stock (any such date, the "*Transaction Agreement Date*") may be used as the applicable date of determination, as the case may be, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of "Pro Forma Basis" or "Consolidated EBITDA."

(b) If the Testing Party elects to use the Transaction Agreement Date as the applicable date of determination in accordance with the foregoing, (a) any fluctuation or change in the Fixed Charge Coverage Ratio, Consolidated Total Debt Ratio, Consolidated Senior Secured Debt Ratio, Consolidated Net Income, Consolidated EBITDA, Consolidated Total Indebtedness, Total Assets and/or Pro Forma Cost Savings of the Issuer from the Transaction Agreement Date to the date of consummation of such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock will not be taken into account for purposes of determining whether any Indebtedness or Lien that is being incurred in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock or in connection with compliance by the Issuer or any of its Restricted Subsidiaries with any other provision of this Indenture or the Notes or any other transaction undertaken in connection with such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock, is permitted to be incurred, (b) if financial statements for one or more subsequent fiscal quarters shall have become available, the Testing Party may elect, in its sole discretion, to re-determine all such baskets, ratios and financial metrics on the basis of such financial statements, in which case such date of redetermination shall thereafter be deemed to be the applicable Transaction Agreement Date for purposes of such baskets, ratios and financial metrics, (c) until such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock is consummated or such definitive agreements are terminated, such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock and all transactions proposed to be undertaken in connection therewith (including the incurrence of Indebtedness, issuance of Disqualified Stock or preferred stock and Liens) will be given pro forma effect when determining compliance of other transactions (including the incurrence of Indebtedness, issuance of Disqualified Stock or preferred stock and Liens unrelated to such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock) that are consummated after the Transaction Agreement Date and on or prior to the date of consummation of such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock and any such transactions (including any incurrence of Indebtedness or issuance of Disqualified Stock or preferred stock and the use of proceeds thereof) will be deemed to have occurred on the Transaction Agreement Date and deemed to be outstanding thereafter for purposes of calculating any baskets, ratios or financial metrics under this Indenture after the Transaction Agreement Date and before the date of consummation of such Restricted Payment, Investment, acquisition, merger, amalgamation, Division or similar transaction or repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or preferred stock and (d) Consolidated Interest Expense for purposes of the Fixed Charge Coverage Ratio will be calculated using an assumed interest rate based on the indicative interest margin (without giving effect to any step-ups) contained in any financing commitment documentation with respect to such Indebtedness, Disqualified Stock or preferred stock or, if no such indicative interest margin exists, as reasonably determined by Issuer in good faith. In addition, compliance with any requirement relating to the absence of a Default or Event of Default may be determined as of the Transaction Agreement Date (including any new Transaction Agreement Date) and not as of any later date as would otherwise be required under this Indenture.

Notwithstanding anything to the contrary herein, so long as an action was taken (or not taken) in reliance upon a basket, ratio of financial metric that was calculated or determined in good faith by a responsible financial or accounting officer of a Testing Party based upon financial information available to such officer at such time and such action (or inaction) was permitted hereunder at the time of such calculation or determination, any subsequent restatement, modification or adjustments made to such financial information (including any restatement, modification or adjustment that would have caused such basket or ratio to be exceeded as a result of such action or inaction) shall not result in any Default or Event of Default.

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating.*

(a) *General.* The Notes and the Trustee's certificate of authentication will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage; *provided* that any such notations, legends or endorsements are in a form reasonably acceptable to the Issuer. Each Note will be dated the date of its authentication. Each Note will bear interest at a rate of 5.500% *per annum* from the Issue Date or from the most recent date to which interest has been paid or provided for, payable semi-annually on April 15 and October 15 of each year (each such date, an "*Interest Payment Date*"), commencing with October 15, 2021, to Holders of record as of the close of business on the April 1 or October 1, whether or not a Business Day, immediately preceding each Interest Payment Date. Interest will be paid on the basis of a 360-day year consisting of twelve 30-day months. The Notes will be issued in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Notes.* Notes issued in global form will be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form will be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Temporary Global Notes.* Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Regulation S Temporary Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. After the expiration of the Restricted Period and upon the receipt by the Trustee of:

(1) certificates from Euroclear and Clearstream, substantially in the form of Exhibit E hereto, certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any Beneficial Owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who will take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(2) an Officer's Certificate from the Issuer, beneficial interests in the Regulation S Temporary Global Note will be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with such exchange of the Regulation S Permanent Global Note, the Trustee will cancel the Regulation S

Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interests as hereinafter provided.

(d) *Euroclear and Clearstream Procedures Applicable*. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream will be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by Participants through Euroclear or Clearstream.

(e) *Issuance of Additional Notes.* Additional Notes ranking *pari passu* with the Initial Notes may be issued from time to time by the Issuer without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes (other than the issue date, the issue price, the first Interest Payment Date and the initial interest accrual date) and shall have the same terms as to status, redemption or otherwise as the Initial Notes; *provided* that in order for any Additional Notes to have the same CUSIP number as the Initial Notes, such Additional Notes must be fungible with the Initial Notes for U.S. federal income tax purposes; *provided, further*, that the Issuer's ability to issue Additional Notes shall be subject to the Issuer's compliance with Sections 4.09 and 4.12 hereof.

Section 2.02 *Execution and Authentication.*

At least one Officer must sign the Notes for the Issuer by manual, facsimile or other electronic signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of an authorized signatory of the Trustee. The signature will be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

The Trustee will, upon receipt of a written order of the Issuer signed by an Officer of the Issuer (an "*Authentication Order*"), together with the other documents required under Sections 13.02 and 13.03 hereof, if any, authenticate (i) Notes for original issue, of which $920,000,000 in aggregate principal amount will be issued on the Issue Date and (ii) any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Issuer pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuer.

Section 2.03 *Registrar and Paying Agent.*

The Issuer will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of the Notes and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Issuer initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Issuer initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust.*

The Issuer will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium on, if any, and interest on, the Notes, and will notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) will have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists.*

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuer will furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes.

Section 2.06 *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes will be exchanged by the Issuer for Definitive Notes if:

(1) the Issuer delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Issuer within 120 days after the date of such notice from the Depositary;

(2) the Issuer in its sole discretion determines, subject to the procedures of the Depositary, that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged by the Issuer for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required pursuant to Section 2.01(c) hereof; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes and the Beneficial Owners thereof have requested such exchange.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c), (d) or (f) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. None of the Issuer, Trustee, Paying Agent, nor any Agent of the Issuer shall have any responsibility or liability for any aspect of the records relating to or payment made on account of beneficial ownership interests in a Global Note, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note*. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above;

provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required by Section 2.01(e) hereof.

(3) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof, or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Temporary Global Note or the Regulation S Permanent Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof,

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes*.

(1) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Issuer or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and the Regulation S Temporary Global Note Legend, as applicable, and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes.* Notwithstanding Sections 2.06(c)(1)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required pursuant to Section 2.01(c) hereof, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(3) *Beneficial Interest in Restricted Global Notes to Unrestricted Definitive Notes*. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if the Registrar receives the following: (i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof, or (ii) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each case, if the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests*.

(1) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a

Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Issuer or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(e) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(1) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if (i) the Holder of such Restricted Definitive Note proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or (ii) the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof, and in each case, if the Issuer so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) [*Reserved*].

(g) *Legends.* The following legends will appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) *Private Placement Legend.* Each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER OR ANOTHER EXEMPTION UNDER THE SECURITIES ACT.

BY ITS ACCEPTANCE HEREOF, THE HOLDER OF THIS NOTE (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN "INSTITUTIONAL" ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER REGULATION D PROMULGATED UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR") AND (2) AGREES THAT IT WILL NOT WITHIN [ONE YEAR—FOR NOTES ISSUED PURSUANT TO RULE 144A][40 DAYS—FOR NOTES ISSUED IN OFFSHORE TRANSACTIONS PURSUANT TO REGULATION S] AFTER THE LATER OF THE DATE OF THE ORIGINAL ISSUANCE OF THIS NOTE AND THE DATE ON WHICH THE ISSUER OR ANY OF ITS RESPECTIVE AFFILIATES OWNED THIS NOTE, OFFER, RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT (A) (I) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (II) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT INSIDE THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (III) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT IS ACQUIRING THE NOTES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE NOTES OF $250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR THE OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, AND THAT PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS NOTE), (IV) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT (IF AVAILABLE), (V) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (OTHER THAN RULE 144) (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (VI) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND

OTHER JURISDICTIONS. BY ITS ACCEPTANCE HEREOF, THE HOLDER OF THIS NOTE FURTHER AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS NOTE PURSUANT TO SUBCLAUSES (III) TO (V) OF CLAUSE (A) ABOVE, AND THAT, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

"BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT (A) EITHER (1) THE HOLDER IS NOT ACQUIRING OR HOLDING THIS SECURITY FOR OR ON BEHALF OF, AND NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION, HOLDING AND SUBSEQUENT DISPOSITION OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS" AND (B) NONE OF THE ISSUER, ANY GUARANTORS OR THE INITIAL PURCHASERS OF THE SECURITIES OR ANY OTHER RESPECTIVE AFFILIATES IS ACTING, OR WILL ACT, AS A FIDUCIARY TO ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT WITH RESPECT TO THE DECISION TO PURCHASE OR HOLD THIS SECURITY OR IS UNDERTAKING TO PROVIDE IMPARTIAL INVESTMENT ADVICE OR GIVE ADVICE IN A FIDUCIARY CAPACITY WITH RESPECT TO THE DECISION TO PURCHASE OR HOLD THIS SECURITY."

(2) *Global Note Legend.* Each Global Note will bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY OR ON BEHALF OF THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE ISSUER OR ITS AGENTS FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(3) *Regulation S Temporary Global Note Legend.* In addition to the Private Placement Legend, the Regulation S Temporary Global Note will bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON."

(h) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note will be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Custodian at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Custodian at the direction of the Trustee to reflect such increase.

(i) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Issuer will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 3.09, 4.10, 4.14, 4.18 and 9.05 hereof).

(3) [Reserved].

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) Neither the Registrar nor the Issuer will be required:

(A) to issue, to register the transfer of, or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding Interest Payment Date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of

principal of and (subject to the record date provisions of the Notes) interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile or other electronic means.

(9) None of the Issuer, the Trustee, or any Agent shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants, Indirect Participants, members or Beneficial Owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(10) Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

Section 2.07 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Issuer and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Issuer will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer may charge for its expenses in replacing a Note.

In case any such mutilated, destroyed, lost, or stolen Note has become due and payable, the Issuer in its sole discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.07, the Issuer may require the payment of a sum sufficient to cover any tax, assessment, fee or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.07 in exchange for any mutilated Note or in lieu of any destroyed, lost, or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the mutilated, destroyed, lost, or stolen Note shall be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.07 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Notes.

Section 2.08 *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to the Issuer for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

None of the Issuer, the Trustee, or any Agent shall have any responsibility or obligation to any Beneficial Owner in a Global Note, a Participant, an Indirect Participant or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Participant or Indirect Participant, with respect to any ownership interest in the Notes or with respect to the delivery to any a Participant, Indirect Participant, Beneficial Owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Note. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes and this Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depositary or its nominee in the case of the Global Note). The rights of Beneficial Owners in the Global Note shall be exercised only through the Depositary subject to the Applicable Procedures. The Issuer, the Trustee, and each Agent shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants, Indirect Participants and any Beneficial Owners. The Issuer, the Trustee, and each Agent shall be entitled to deal with the Depositary, and any nominee thereof, that is the registered holder of any Global Note for all purposes of this Indenture relating to such Global Note (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or Holder of a beneficial ownership interest in such Global Note) as the sole holder of such Global Note and shall have no obligations to the Beneficial Owners thereof. None of the Issuer, the Trustee, or any Agent have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Note, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such Global Note, for any transactions between the Depositary and any Participant, Indirect Participant or between or among the Depositary, any such Participant and Indirect Participant and/or any holder or owner of a beneficial interest in such Global Note, or for any transfers of beneficial interests in any such Global Note.

Notwithstanding the foregoing, with respect to any Global Note, nothing herein shall prevent the Issuer, the Trustee, or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depositary (or its nominee), as a Holder, with respect to such Global Note or shall impair, as between such Depositary and owners of beneficial interests in such Global Note, the operation of customary practices governing the exercise of the rights of such Depositary (or its nominee) as Holder of such Global Note.

Section 2.09 *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or any Guarantor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any Guarantor, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned will be so disregarded. Upon request of the Trustee, the Issuer will identify any such Notes known by the Issuer to be so owned in an Officer's Certificate delivered to the Trustee, upon which the Trustee shall be entitled to conclusively rely.

Section 2.10 *Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer will prepare and the Trustee will authenticate Definitive Notes in exchange for temporary Notes. Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation.*

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee for cancellation any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of cancelled

Notes in accordance with its customary procedures (subject to the record retention requirements of the Exchange Act). Upon the request of the Issuer, certification of the cancellation of all cancelled Notes will be delivered to the Issuer. The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest.*

If the Issuer defaults in a payment of interest on the Notes, the Issuer will pay the defaulted interest in any lawful manner *plus*, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof; *provided* that if the Issuer pays the defaulted interest prior to the date that is 30 days after the date of default in payment of interest, payment shall be to the recordholders of the Notes as of the original record date. The Issuer will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. If such default in interest continues for 30 days, the Issuer will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) will mail or cause to be mailed (or with respect to Global Notes, to the extent permitted or required by applicable DTC procedures or regulations, send electronically) to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.13 *CUSIP Numbers.*

The Issuer in issuing the Notes may use "CUSIP" or other similar numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" or other similar numbers in notices of redemption as a convenience to Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will as promptly as practicable notify the Trustee in writing of any change in "CUSIP" or other similar numbers.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Issuer elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least two Business Days for Global Notes and 10 days for Definitive Notes (or such shorter period acceptable to the Trustee) before a notice of redemption is required to be mailed or sent to Holders pursuant to Section 3.03, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed;

(4) the redemption price, if then ascertainable;

(5) if such redemption is conditioned, then one or more conditions precedent; and

(6) if requested by the Issuer, that the Trustee give the notice of redemption in the Issuer's name and at its expense setting forth the information to be stated in such notice as provided in Section 3.03.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee (subject to Section 4.10 or 4.14, as applicable) will select Notes for redemption or purchase pro rata, by lot or by such method as it shall deem fair and

appropriate. If the Notes are represented by Global Notes, interests in such Global Notes will be selected for redemption or purchase by DTC in accordance with its Applicable Procedures.

In the event of partial redemption or purchase, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 10 nor more than 60 days prior to the redemption or purchase date (unless such notice of redemption is mailed or sent more than 60 days prior to a redemption or purchase date pursuant to clause (a) or (b) of Section 3.03) by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased; *provided*, that the unredeemed or unpurchased portion of a Note must be in a minimum denomination of $2,000. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption.*

Subject to the provisions of Section 3.09 hereof, at least 10 days but not more than 60 days before a redemption date, the Issuer will mail or cause to be mailed, by first class mail (or with respect to Global Notes, to the extent permitted or required by applicable DTC procedures or regulations, send electronically), a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed or sent more than 60 days prior to a redemption date if (a) the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 11 hereof or (b) in the case of a redemption that is subject to one or more conditions precedent, the date of redemption is extended as permitted in this Indenture.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price, or if not then ascertainable, the manner of calculation thereof,

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder of the Notes upon cancellation of the original Note (or transferred by book entry);

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date (whether or not a Business Day);

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(9) if the redemption is conditional, the one or more conditions precedent and that the Issuer may delay the redemption date in its discretion until such time as the condition or conditions are satisfied or waived by the Issuer in its sole discretion, or such redemption may not occur and such notice may be modified or rescinded in the event that any or all such conditions

shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed (which may exceed 60 days from the date of the redemption notice in such case).

At the Issuer's request, the Trustee will give the notice of redemption in the Issuer's name and at the Issuer's expense subject to compliance with Section 3.01.

Section 3.04 *Effect of Notice of Redemption.*

Except as provided in Section 3.07(f) hereof, once notice of redemption is mailed or transmitted in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date (as such date may be extended or delayed) at the redemption price. The notice, if mailed or transmitted in a manner herein provided shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or by such other means as may be required hereby or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest will cease to accrue on the Notes or portion thereof called for redemption as of the redemption date (whether or not a Business Day).

Section 3.05 *Deposit of Redemption or Purchase Price.*

Prior to 11:00 a.m. Eastern Time on the redemption or purchase date, the Issuer will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of, and accrued interest, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest, if any, on all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Issuer will issue, and upon receipt of an Authentication Order, together with the documents required in Sections 13.02 and 13.03 hereof, the Trustee will authenticate for the Holder at the expense of the Issuer, a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered (or transfer such Note by book entry).

Section 3.07 *Optional Redemption.*

(a) At any time prior to April 15, 2024, the Issuer may on any one or more occasions redeem up to 40% of the aggregate principal amount of Notes (calculated after giving effect to the issuance of any Additional Notes) issued under this Indenture at a redemption price equal to 105.500% of the principal amount of Notes redeemed, *plus* accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption (subject to the right of Holders of Notes on a relevant record date to receive interest on an Interest Payment Date occurring on or prior to the redemption date), with the cash proceeds of any Equity Offering; *provided* that:

(1) at least the lesser of (a) 50% of the aggregate principal amount of the Notes (including any Additional Notes) then outstanding or (b) $100.0 million aggregate principal amount of the Notes (including any Additional Notes) remains outstanding immediately after the occurrence of each such redemption (except to the extent otherwise repurchased or redeemed in accordance with the terms of this Indenture); and

(2) the redemption occurs within 180 days of the date of the closing of such Equity Offering.

(b) At any time prior to April 15, 2024, the Issuer may on any one or more occasions redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount of the Notes redeemed, plus the Applicable Premium as of the date of the redemption notice, and accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption, subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the redemption date.

(c) At any time, in connection with any offer to purchase the Notes (including pursuant to a Change of Control Offer, Alternate Offer or Asset Sale Offer), if Holders of at least 90% in aggregate principal amount of the Notes outstanding tender such Notes in such offer, the Issuer or such other Person, upon notice given not more than 60 days following such purchase pursuant to such offer, may redeem all of the remaining Notes of such series at a price in cash equal to the price offered to each Holder in such prior offer, *plus*, to the extent not included in the prior offer payment, accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption, subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the redemption date. In determining whether the Holders of at least 90% in aggregate principal amount of the outstanding Notes have validly tendered and not validly withdrawn Notes in an offer, Notes owned by an Affiliate of the Issuer or by funds controlled or managed by an Affiliate of the Issuer, or any successor thereof, shall be deemed to be outstanding for the purposes of such offer.

(d) Prior to April 15, 2024, the Issuer may redeem during each calendar year commencing with the calendar year in which the Issue Date occurs up to 10% of the aggregate principal amount of the Notes, including any Additional Notes, at its option, from time to time at a redemption price equal to 103% of the aggregate principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the redemption date); *provided* that in any given calendar year, any amount not utilized pursuant to this paragraph in any calendar year may be carried forward to subsequent calendar years.

(e) Except pursuant to the preceding paragraphs, the Notes will not be redeemable at the Issuer's option prior to April 15, 2024.

(f) On or after April 15, 2024, the Issuer may on any one or more occasions redeem all or a portion of the Notes at the redemption prices (expressed as percentages of principal amount) set forth below, *plus* accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the applicable date of redemption, if redeemed during the 12-month period beginning on April 15 of the years indicated below, subject to the rights of Holders of Notes on a relevant record date to receive interest on an Interest Payment Date occurring on or prior to the redemption date:

Year	**Percentage**
2024	102.750%
2025	101.375%
2026 and thereafter	100.000%

(g) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. In connection with any redemption of Notes made pursuant to this Section 3.07, any such redemption may, at the Issuer's discretion, be performed by another Person and/or be subject to one or more conditions precedent. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, the related notice of redemption shall state that, in the Issuer's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or such redemption may not occur and such notice may be modified or rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed (which may exceed 60 days from the date of the redemption notice in such case). Such notice of redemption may be extended if such conditions precedent have not been met by providing notice to the Holders of the Notes. Notes called for redemption become due on the applicable redemption date (to the extent such redemption date occurs and as such date may be extended or delayed). Unless the Issuer defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date (whether or not a Business Day).

(h) The Issuer or its Affiliates may at any time and from time to time purchase Notes. Any such purchases may be made through open market or privately negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise, upon such terms and at such prices as well as with such consideration as the Issuer or any such Affiliates may determine. To the extent Notes are purchased or otherwise acquired by the Issuer, such Notes may be cancelled and all obligations thereunder terminated.

Section 3.08 *Mandatory Redemption.*

The Issuer is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 hereof, the Issuer is required to commence an offer to all Holders to purchase Notes (an "*Asset Sale Offer*"), it will follow the procedures specified below.

The Asset Sale Offer shall be made to all Holders and, if required by the terms of any Parity Lien Indebtedness and, if the assets or property disposed of in the Asset Sale was not Collateral, Indebtedness of the Issuer or any Guarantor that ranks *pari passu* with the Notes and contains provisions similar to those set forth in this Indenture with respect to offers to purchase, prepay or redeem with the proceeds of sales of assets; the Asset Sale Offer will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "*Offer Period*"). Promptly after the termination of the Offer Period (the "*Offer Purchase Date*"), the Issuer will apply all Excess Proceeds (the "*Offer Amount*") to the purchase of Notes, Parity Lien Indebtedness and such other *pari passu* Indebtedness (to be purchased on a *pro rata* basis based on the principal amount of Notes, Parity Lien Indebtedness and such other *pari passu* Indebtedness tendered or required to be repaid or redeemed), and thereafter, the Notes to be purchased shall be selected on a *pro rata* basis (subject to applicable DTC procedures with respect to the Global Notes) based on the principal amount tendered (with, in each case, such adjustments as may be deemed appropriate by the Issuer, so that only Notes in denominations of $2,000, or an integral multiple of $1,000 in excess thereof, will be purchased, *provided* that any unpurchased portion of a Note must be in a minimum denomination of $2,000) or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Asset Sale Offer shall be purchased. Payment for any Notes so purchased will be made in the same manner as principal and interest payments are made.

If the Offer Purchase Date is on or after an interest record date and on or before the related Interest Payment Date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer, the Issuer will send, by first class mail (or with respect to Global Notes to the extent permitted or required by applicable DTC procedures or regulations, send electronically), a notice to the Trustee and each of the Holders, with a copy to the Trustee. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The notice, which will govern the terms of the Asset Sale Offer, will state:

(1) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer will remain open;

(2) the Offer Amount, the purchase price and the Offer Purchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest after the Offer Purchase Date (whether or not a Business Day);

(5) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in minimum denominations of $2,000 or an integral multiple of $1,000 in excess thereof; *provided* that any unpurchased portion of a Note must be in a minimum denomination of $2,000;

(6) that Holders electing to have Notes purchased pursuant to any Asset Sale Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer the Note by book-entry transfer, to the Issuer, a Depositary, if appointed by the Issuer, or a Paying Agent at the address specified in the notice at least three Business Days before the Offer Purchase Date;

(7) that Holders will be entitled to withdraw their election if the Issuer, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(8) that, if the aggregate principal amount of Notes, Parity Lien Indebtedness and other *pari passu* Indebtedness surrendered by holders thereof exceeds the Offer Amount, the Issuer will select the Notes, Parity Lien Indebtedness and other *pari passu* Indebtedness to be purchased on a *pro rata* basis based on the principal amount of Notes, Parity Lien Indebtedness and such other *pari passu* Indebtedness tendered or required to be prepaid or redeemed, and thereafter the Trustee will select the Notes to be purchased on a *pro rata* basis (subject to applicable DTC procedures with respect to Global Notes) based on the principal amount tendered (with, in each case, such adjustments as may be deemed appropriate by the Issuer or the Trustee, as applicable, so that only Notes in minimum denominations of $2,000, or an integral multiple of $1,000 in excess thereof, will be purchased; *provided* that any unpurchased portion of a Note must be in a minimum denomination of $2,000); and

(9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Offer Purchase Date, the Issuer will, to the extent lawful, accept for payment (on a pro rata basis to the extent necessary), the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this Section 3.09. The Issuer, the Depositary or the Paying Agent, as the case may be, will promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Issuer for purchase, and the Issuer will promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, together with the documents required under Sections 13.02 and 13.03 hereof, will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer will publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Offer Purchase Date.

Notwithstanding anything in this Indenture to the contrary, the Issuer's obligation to make an Asset Sale Offer may be waived or modified or terminated with written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the Notes) prior to the date by which the Issuer is required to make such Asset Sale Offer.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes.*

The Issuer will pay or cause to be paid the principal of, premium on, if any, and interest, if any, on, the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest, if any, will be considered paid on the date due if the Paying Agent, if other than the Issuer, Holdings or a Subsidiary thereof, holds as of 11:00 a.m. Eastern Time on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest, if any, then due. Payments on the Notes will be made free and clear of any deduction or withholding for taxes, except as otherwise required by law.

The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at a rate that is 1% higher than the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest at the same stepped-up rate to the extent lawful.

Section 4.02 *Maintenance of Office or Agency.*

The Issuer will maintain in the contiguous United States, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee; *provided* that no service of legal process against the Issuer or any Guarantors may be made at any office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission will in any manner relieve the Issuer of their obligation to maintain an office or agency in the contiguous United States for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.03 hereof.

Section 4.03 *Reports.*

(a) So long as any Notes are outstanding, the Issuer will provide the Trustee and, upon request, to Holders of Notes a copy of all of the information and reports referred to below:

(1) within 90 days after the end of each fiscal year (or such longer period as may be permitted by the Commission pursuant to the reporting requirements for a non-accelerated filer), annual audited consolidated financial statements of the Issuer that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Issuer had been a reporting company under the Exchange Act for such fiscal year (but only to the extent similar information is presented in the Offering Memorandum), including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" with respect to the periods presented and a report on the annual financial statements by the Issuer's independent accountants (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in the Offering Memorandum);

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year thereafter (or such longer period as may be permitted by the Commission pursuant to the reporting requirements for a non-accelerated filer), unaudited quarterly consolidated financial statements of the Issuer (including a balance sheet, statement of operations and statement of cash flows) that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Issuer had been a reporting company under the Exchange Act for the interim period as of, and for the period ending on, the end of such fiscal quarter (but only to the extent similar information is presented in the Offering Memorandum), including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in the Offering Memorandum), subject to normal year-end adjustments and the absence of footnotes; and

(3) within 15 days after the time period specified for filing current reports on Form 8-K by the Commission, current reports containing substantially all of the information that would be required to be filed in a current report on Form 8-K under the Exchange Act on the Issue Date pursuant to Items 1.01, 1.03, 2.01, 2.03, 2.04, 4.01, 4.02, 5.01, 5.02(a) through (c) (other than compensation information), and 5.03(b) (in each case, excluding the financial statements, pro forma financial information

and exhibits, if any, that would be required by Item 9.01) of Form 8-K if the Issuer had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Issuer determines in its good faith judgment that such event is not material to Holders or the business, assets, operations, financial position or prospects of the Issuer and its Restricted Subsidiaries, taken as a whole, or if the Issuer determines in its good faith judgment that such disclosure would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Issuer and its Restricted Subsidiaries, taken as a whole;

provided, *however*, that in addition to providing such information to the Trustee, the Issuer will be required to make available to the Holders, bona fide prospective investors in the Notes, bona fide market makers in the Notes affiliated with any Initial Purchaser and bona fide securities analysts (to the extent providing analysis of investment in the Notes) such information by (i) posting to its website (or the website of any direct or indirect parent of the Issuer or of a Subsidiary of the Issuer) or on IntraLinks or any comparable password-protected online data system, in each case, subject to the extensions provided for in clauses (1) and (2) of this Section 4.03(a), within 15 days after the time the Issuer would be required to provide such information pursuant to clause (1), (2) or (3) above, as applicable, or (ii) otherwise providing substantially comparable availability of such reports (as determined by the Issuer in good faith) (it being understood that, without limitation, making such reports available on Bloomberg or another comparable private electronic information service shall constitute substantially comparable availability).

(b) Notwithstanding the foregoing, (a) the Issuer will not be required to furnish any information, financial statements, certificates or reports required by (i) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K, (ii) Regulation G or Item 10(e) of Regulation S-K promulgated by the Commission with respect to any non-GAAP financial measures contained therein, or (iii) Rule 3-01(e), Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, (b) such reports will not be required to contain any segment reporting, (c) such reports shall not be required to present compensation required by Item 402 of Regulation S-K or otherwise or beneficial ownership information and (d) the information and reports referred to in Section 4.03(a)(1), (2) and (3) shall not be required to include any exhibits required by Item 15 of Form 10-K, Item 6 of Form 10-Q or Item 9.01 of Form 8-K.

(c) The Issuer will be deemed to have furnished such information and reports referred to above to the Trustee and the Holders of the Notes if the Issuer or any direct or indirect parent of the Issuer has (i) filed such reports with the Commission via the EDGAR (or successor) filing system or if such reports are otherwise publicly available, or (ii) posted such reports on the Issuer's (or any direct or indirect parent of the Issuer or any Subsidiary) website. The Trustee will have no responsibility to determine whether such filing or posting has occurred.

(d) For so long as the Issuer has designated certain of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required to be provided by Section 4.03(a) will include a reasonably detailed summary presentation (which need not be audited or reviewed by the auditors), either on the face of the financial statements, in the footnotes thereto, in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" or other comparable section, of the financial condition and results of operations of the Issuer and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer.

(e) In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Notes are outstanding, it will furnish to Holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision).

(f) In addition, notwithstanding the foregoing, the financial statements, information and other information and documents required to be provided as described in this Section 4.03 may be, rather than those of the Issuer, those of (a) any predecessor or successor of the Issuer or any entity meeting the requirements of clause (b) or (c) of this paragraph, (b) any Wholly Owned Subsidiary of the Issuer that, together with its consolidated Subsidiaries, constitutes substantially all of the assets of the Issuer and its consolidated Subsidiaries ("*Qualified Reporting Subsidiary*") or (c) any direct or indirect parent of the Issuer; *provided* that, if the financial information so furnished relates to such Qualified Reporting Subsidiary of the Issuer or such direct or indirect parent of the Issuer, the same is accompanied by consolidating information, which may be posted to the website of the Issuer (or any direct or indirect parent of the Issuer or any Subsidiary) or on a non-public, password-protected website maintained by the Issuer or a third party, that explains in reasonable detail the differences between the information relating to such Qualified Reporting Subsidiary or such parent entity (as the case may be), on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand. For the

avoidance of doubt, the consolidating information referred to in the proviso in the preceding sentence need not be audited or reviewed by the Issuer's independent accountants.

(g) So long as Notes are outstanding, the Issuer will also:

(a) within 15 Business Days after furnishing to the Trustee the annual and quarterly reports required by Section 4.03(a)(1) and (2), hold a conference call to discuss such reports and the results of operations for the relevant reporting period; and

(b) post to its website or on IntraLinks or any comparable password-protected online data system, which will require a confidentiality acknowledgment, prior to the date of the conference call required to be held in accordance with Section 4.03(g)(a), announcing the time and date of such conference call and either including all information necessary to access the call or informing holders, prospective investors, market makers affiliated with any Initial Purchaser and securities analysts how they can obtain such information, including, without limitation, the applicable password or other login information.

Any Person who requests or accesses such financial information required by this Section 4.03(g) will be required to represent to the Issuer (to the reasonable good faith satisfaction of the Issuer) that:

(1) it is a Holder, a Beneficial Owner of the Notes, a bona fide prospective investor in the Notes or a bona fide market maker in the Notes affiliated with any Initial Purchaser or a bona fide securities analyst providing an analysis of investment in the Notes;

(2) it will not use the information in violation of applicable securities laws or regulations;

(3) it will keep such information confidential and will not communicate the information to any Person and not use such information in any manner intended to compete with the business of the Issuer and its Subsidiaries; and

(4) it is not a Person (which includes such Person's Affiliates) that (i) is principally engaged in a Permitted Business or (ii) derives a significant portion of its revenue from operating a Permitted Business.

Notwithstanding anything herein to the contrary, failure by the Issuer to comply with any of its obligations hereunder for purposes of Section 6.01(3) will not constitute an Event of Default thereunder until 120 days after the receipt of the written notice delivered thereunder; *provided* that, to the extent any information is not provided within the time periods specified in this Section 4.03 and such information is subsequently provided, the Issuer will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured.

The delivery of any reports, information and documents to the Trustee is for informational purposes only and the information and the Trustee's receipt of such reports shall not constitute actual or constructive knowledge or notice of any information contained therein or determined therefrom, including the Issuer's compliance with any of its covenants (as to which the Trustee shall be entitled to rely conclusively on an Officer's Certificate).

Section 4.04 *Compliance Certificate.*

(a) The Issuer shall deliver to the Trustee, within 90 days after the end of each fiscal year (beginning with the first full fiscal year after the Issue Date, which may be delivered within 120 days after the end of such fiscal year), an Officer's Certificate stating that in the course of the performance by the signer of his or her duties as an Officer of the Issuer he or she would normally have knowledge of any Default or Event of Default and whether or not the signer knew of any Default or Event of Default that occurred during such period (and, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuer or Guarantors are taking or propose to take with respect thereto) and that to his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, premium on, if any, or interest on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuer or Guarantors are taking or propose to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Issuer will deliver to the Trustee, within 30 days of any Officer becoming aware of any Default or Event of Default (unless such Default or Event of Default has been cured or waived during such 30-day period), an Officer's Certificate specifying such Default or Event of Default, its status and what action the Issuer or the Guarantors are taking or propose to take with respect thereto.

Section 4.05 *Taxes.*

The Issuer will pay, and will cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or except where the failure to effect such payment would not have a material and adverse effect on the business of the Issuer and its Restricted Subsidiaries, taken as a whole.

Section 4.06 *Stay, Extension and Usury Laws.*

The Issuer and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; the Issuer and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Restricted Payments.*

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Issuer's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Issuer or any of its Restricted Subsidiaries) (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Issuer and other than dividends or distributions payable to the Issuer or a Restricted Subsidiary of the Issuer);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Issuer) any Equity Interests of the Issuer or any direct or indirect parent of the Issuer;

(3) make any voluntary or optional payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Issuer or any Subsidiary Guarantor that is contractually subordinated in right of payment to the Notes or to any Note Guarantee, except any such payment on Indebtedness permitted under Section 4.09(b)(6) or (7) and a payment of interest when due or principal at the Stated Maturity thereof or the purchase, redemption, repurchase, defeasance, acquisition or retirement for value of any such Indebtedness within 365 days of the Stated Maturity thereof; or

(4) make any Restricted Investment

(all such payments and other actions set forth in clauses (1) through (4) of this Section 4.07(a) being collectively referred to as "*Restricted Payments*"), unless, at the time of and after giving effect to such Restricted Payment:

(x) in the case of clauses (1), (2) and (3) above, no Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(y) other than with respect to any Restricted Payments made pursuant to clause (z)(F) below, the Issuer would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment has been made at the beginning of the applicable four-quarter period, have been permitted to incur at least $1.00 of additional Indebtedness as Ratio Debt; and

(z) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer or its Restricted Subsidiaries since the Issue Date (including Restricted Payments permitted by Section 4.07(b)(3) hereof and excluding Restricted Payments permitted by all other clauses of Section 4.07(b) hereof), is less than the sum, without duplication, of:

(A) an amount (which may not be less than zero) equal to 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) from the Issue Date to the end of the most recently ended fiscal quarter for which internal financial statements of the Issuer are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*

(B) 100% of the aggregate net proceeds, including cash and Fair Market Value of property other than cash (as determined in accordance with Section 4.07(c) hereof), received by the Issuer after the Issue Date as a contribution to its common equity capital or from the issue or sale of Qualifying Equity Interests of the Issuer or any direct or indirect parent of the Issuer (excluding, without duplication, Designated Preferred Stock, the Cash Contribution Amount and Excluded Contributions), or from the issue or sale of Disqualified Stock of the Issuer or debt securities of the Issuer, in each case that have been converted into or exchanged for Qualifying Equity Interests of the Issuer (other than Qualifying Equity Interests and convertible or exchangeable Disqualified Stock or debt securities sold to a Subsidiary of the Issuer); *plus*

(C) 100% of the aggregate amount of cash and the Fair Market Value of property other than cash (as determined in accordance with Section 4.07(c) hereof) received by the Issuer or a Restricted Subsidiary of the Issuer from (A) the sale or disposition (other than to the Issuer or a Restricted Subsidiary of the Issuer) of Restricted Investments made after the Issue Date and from repurchases and redemptions of such Restricted Investments from the Issuer and its Restricted Subsidiaries by any Person (other than the Issuer or its Restricted Subsidiaries) and from repayments of loans or advances that constituted Restricted Investments made after the Issue Date; (B) the sale (other than to the Issuer and its Restricted Subsidiaries) of the Capital Stock of an Unrestricted Subsidiary; (C) a distribution or dividend from an Unrestricted Subsidiary, to the extent that such amounts were not otherwise included in the Consolidated Net Income of the Issuer for such period; (D) any Restricted Investment that was made after the Issue Date in a Person that is not a subsidiary at such time that subsequently becomes a Restricted Subsidiary of the Issuer; and (E) any returns, profits, distributions and similar amounts received on account of any Permitted Investment made after the Issue Date subject to a dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment) and without duplication of any returns, profits, distributions or similar amounts included in the calculation of such basket; *plus*

(D) in the event that any Unrestricted Subsidiary of the Issuer designated as such after the Issue Date is redesignated as a Restricted Subsidiary or has been merged or consolidated with or into or transfers or conveys its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer, in each case after the Issue Date, an amount (which may not be less than zero) equal to 100% of the Fair Market Value of the Issuer's Restricted Investment in such Subsidiary (as determined in accordance with Section 4.07(c) hereof) as of the date of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), after deducting any Indebtedness associated with the Unrestricted Subsidiary so designated or combined or any Indebtedness associated with the assets so transferred or conveyed (other than in each case to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary constituted a Permitted Investment); *plus*

(E) the aggregate amount of Retained Declined Proceeds since the Issue Date; *plus*

(F) the greater of (x) $100.0 million and (y) 30.0% of Consolidated EBITDA.

(b) The provisions of Section 4.07(a) hereof will not prohibit:

(1) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Issuer to the Holders of its Equity Interests so long as the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution;

(2) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Issuer) of, Equity Interests of the Issuer (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Issuer; provided that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will not be considered to be net proceeds of Qualifying Equity Interests for purposes of Section 4.07(a)(z)(B) hereof;

(3) the payment of any dividend, the consummation of any redemption or making of any Investment within 90 days after the date of declaration of the dividend, the giving of the redemption notice or the entering into of a definitive agreement to make the investment, as the case may be, if at the date of declaration, notice or execution of agreement, the dividend, redemption payment or investment would have complied with the provisions of this Indenture;

(4) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Issuer or any Subsidiary Guarantor that is contractually subordinated in right of payment to the Notes or to any Note Guarantee with the net cash proceeds of Refinancing Indebtedness;

(5) the repurchase, retirement or other acquisition (or the declaration and payment of dividends to, or the making of loans to, any direct or indirect parent of the Issuer, to finance any such repurchase, retirement or other acquisition) for value of Equity Interests of the Issuer, any direct or indirect parent of the Issuer or any Restricted Subsidiary of the Issuer held by any future, present or former employee, officer, director, manager, consultant or independent contractor of the Issuer, any direct or indirect parent of the Issuer or any Subsidiary of the Issuer (or any such Person's estates, heirs, family members, spouses or former spouses or permitted transferees) (including for all purposes of this clause (5), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor (or their estates, heirs, family members, spouses or former spouses or permitted transferees) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other similar agreement or arrangement; *provided* that the aggregate amounts paid under this clause (5) do not exceed (i) the greater of (x) $25.0 million and (y) 7.5% of Consolidated EBITDA in any calendar year or (ii) subsequent to the consummation of any public Equity Offering of common stock or other comparable equity interests of the Issuer or any direct or indirect parent of the Issuer, the greater of (x) $40.0 million and (y) 12.0% of Consolidated EBITDA (in each case, with unused amounts in any calendar year being permitted to be carried over for succeeding calendar years); *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds received by the Issuer or any of its Restricted Subsidiaries from the sale of Qualifying Equity Interests of the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer), to any employee, officer, director, manager, consultant or independent contractor of the Issuer and its Restricted Subsidiaries or any direct or indirect parent of the Issuer that occurs after the Issue Date; *provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments pursuant to Section 4.07(a)(z) hereof; *plus*

(b) the cash proceeds of key man life insurance policies received by the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer), and its Restricted Subsidiaries after the Issue Date; *plus*

(c) the amount of any cash bonuses otherwise payable to employees, officers, directors, managers, consultants or independent contractors of the Issuer or its Restricted Subsidiaries or any direct or indirect parent of the Issuer that are foregone in return for the receipt of Equity Interests; *less*

(d) the amount of cash proceeds described in subclause (a), (b) or (c) of this Section 4.07(b)(5) previously used to make Restricted Payments pursuant to this Section 4.07(b)(5);

provided that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) of this Section 4.07(b)(5) in any calendar year;

(6) the repurchase of Equity Interests (or the declaration and payment of any dividends to, or the making of loans or advances to, any direct or indirect parent of the Issuer to finance such repurchase) (i) deemed to occur upon the exercise of stock options, warrants or other similar stock-based awards to the extent such Equity Interests represent a portion of the exercise price of those stock options, warrants or other similar stock-based awards or (ii) in connection with a gross-up for tax withholding related to such Equity Interests;

(7) the declaration and payment of dividends to holders of a class or series of Disqualified Stock of the Issuer or any Restricted Subsidiary or any preferred stock of any Restricted Subsidiary of the Issuer issued on or after the Issue Date in accordance with Section 4.09 hereof;

(8) payments of cash, dividends, distributions, advances or other Restricted Payments by the Issuer or any of its Restricted Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares or upon the purchase, redemption or acquisition of fractional shares (or the declaration and payment of any dividends to, or the making of loans to, any direct or indirect parent of the Issuer to finance such payment, purchase, redemption or acquisition), including in connection with (i) the exercise of options or warrants, (ii) the conversion or exchange of Capital Stock or (iii) stock dividends, splits or combinations or business combinations;

(9) Permitted Payments to Parent;

(10) purchases of receivables pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Transaction and distributions or payments of Securitization Fees;

(11) the declaration and payment of dividends on the Issuer's common stock (or the payment of dividends to any direct or indirect parent of the Issuer to fund the payment of dividends on its common stock) in an aggregate amount not to exceed in any fiscal year the sum of (x) 6.0% of the net proceeds received by the Issuer (or by any direct or indirect parent of the Issuer and contributed to the Issuer) from any Equity Offerings of the Issuer or any direct or indirect parent of the Issuer (excluding any Equity Offering in connection with the Transactions) and (y) 6.0% of the Market Capitalization;

(12) Restricted Payments that are made with Excluded Contributions;

(13) the payment of dividends, other distributions and other amounts by the Issuer to, or the making of loans to, any direct or indirect parent of the Issuer, in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any direct or indirect parent of the Issuer, if applicable, to pay interest and/or principal on Indebtedness the proceeds of which have been permanently contributed to the Issuer or any of its Restricted Subsidiaries and that has been guaranteed by, or is otherwise considered Indebtedness of, the Issuer or any of its Restricted Subsidiaries incurred in accordance with Section 4.09 hereof; *provided* that in no event shall the contribution of the proceeds of such Indebtedness to the Issuer or any of its Restricted Subsidiaries be applied to increase the capacity under Section 4.07(a).

(14) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness that is contractually subordinated in right of payment to the Notes, Disqualified Stock or preferred stock of the Issuer and its Restricted Subsidiaries pursuant to provisions similar to those described in Section 4.10 and Section 4.14 hereof; *provided* that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Issuer (or a third party to the extent permitted by this Indenture) has, to the extent required by this Indenture, made a Change of Control Offer, Alternate Offer or Asset Sale Offer, as the case may be, with respect to the Notes as a result of such Change of Control or Asset Sale, as the case may be, and has repurchased all Notes validly tendered and not withdrawn in connection with such Change of Control Offer, Alternate Offer or Asset Sale Offer, as the case may be;

(15) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary of the Issuer by, Unrestricted Subsidiaries;

(16) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this Section 4.07(b)(16) not to exceed the greater of (x) $180.0 million and (y) 55.0% of Consolidated EBITDA;

(17) any Restricted Payment made in connection with the Transactions described or contemplated by the Offering Memorandum and the fees and expenses related thereto or made to fund amounts owed to Affiliates (including the declaration and payment of dividends to, or the making of loans to, any direct or indirect parent company of the Issuer to fund such payment), in each case to the extent permitted by Section 4.11 hereof;

(18) the repayment of intercompany debt between or among the Issuer and any of its Restricted Subsidiaries;

(19) payments and distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a sale, consolidation, merger, amalgamation or transfer of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole that complies with the terms of this Indenture, including Section 5.01 hereof;

(20) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued after the Issue Date and the declaration and payment of dividends to any direct or indirect parent of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of any direct or indirect parent of the Issuer, issued after the Issue Date; *provided*, *however*, that (a) the Fixed Charge Coverage Ratio for the Issuer's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such Designated Preferred Stock is issued, after giving effect to such issuance (and the payment of dividends or distributions) on a Pro Forma Basis, would have been at least 2.00 to 1.00 and (b) the aggregate amount of dividends declared and paid pursuant to this Section 4.07(b)(20) does not exceed the net cash proceeds actually received by the Issuer from any such sale of Designated Preferred Stock (other than Disqualified Stock) issued after the Issue Date;

(21) any Restricted Payment so long as immediately after giving effect to the making of such Restricted Payment, the Issuer's Consolidated Total Debt Ratio would be no greater than 5.00 to 1.00 on a Pro Forma Basis;

(22) [reserved];

(23) any payment that is intended to prevent any Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code;

(24) [reserved]; and

(25) the payment of a dividend or other distribution the proceeds of which are used to consummate the Acquisition;

provided, *however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (5), (16), (20) and (21) of this Section 4.07(b), no Event of Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) Other than as set forth under Section 1.04 hereof, the amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. For purposes of determining compliance with this Section 4.07, in the event that a Restricted Payment or Investment meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (25) of Section 4.07(b) hereof or clauses (1) through (25) of the definition of "Permitted Investment" or is entitled to be incurred pursuant to Section 4.07(a) hereof, the Issuer will be entitled to classify such Restricted Payment or Investment (or portion thereof) on the date of its payment or date of determination or later reclassify such Restricted Payment or Investment (or portion thereof) in any manner that complies with this Section 4.07 or the definition of "Permitted Investment" and/or one or more of the exceptions contained in the definition of "Permitted Investment" as of the date of such reclassification. If the Issuer or any of its Restricted Subsidiaries makes a Restricted Payment that, at the time of the making of such Restricted Payment, in the good faith determination of the Issuer, would be permitted under the requirements of this Indenture, such Restricted Payment shall be deemed to have been made

in compliance with this Indenture notwithstanding any subsequent adjustment made in good faith to the Issuer's financial statements affecting Consolidated Net Income.

Section 4.08 *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.*

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries that are not Guarantors to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Guarantor to:

(1) pay dividends or make any other distributions on its Capital Stock to the Issuer or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof will not apply to encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions of the Issuer or any of its Restricted Subsidiaries (i) in effect on the Issue Date (including any Floorplan Indebtedness) or (ii) pursuant to the ABL Credit Agreement and other documents relating to the ABL Credit Agreement, related swap contracts and Indebtedness permitted pursuant to Section 4.09(b)(2);

(2) this Indenture, the Notes and the Note Guarantees (and any Additional Notes and related guarantees), and the Security Documents and Intercreditor Agreements;

(3) agreements governing other Indebtedness, Disqualified Stock or preferred stock permitted to be incurred under the provisions of Section 4.09 hereof and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the restrictions therein either (i) are not materially more restrictive than those contained in agreements governing Indebtedness in effect on the Issue Date, or (ii) are not materially more disadvantageous to Holders of the Notes than is customary in comparable financings (as determined by the Issuer in good faith, which determination shall be conclusive) and in the case of subclause (ii) either (x) the Issuer determines (in good faith) that such encumbrance or restriction will not affect the Issuer's ability to make principal or interest payments on the Notes or (y) such encumbrances or restrictions apply only during the continuance of a default in respect of payment or a financial maintenance covenant relating to such Indebtedness;

(4) applicable law, rule, regulation, order, approval, license, permit or similar restriction;

(5) any instrument of a Person acquired by, or merged, amalgamated or consolidated with or into, the Issuer or any of its Restricted Subsidiaries as in effect at the time of such acquisition or at the time it merges with or into the Issuer or any Restricted Subsidiary (except to the extent such instrument was entered into in connection with or 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, or the property or assets of the Person, so acquired or designated; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(6) customary non-assignment or sub-letting provisions in contracts, leases, sub-leases and licenses entered into in the ordinary course of business;

(7) purchase money obligations, mortgage financings and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of Section 4.08(a) hereof;

(8) contracts for the sale or other disposition of Capital Stock or assets, including any agreement for the sale or other disposition of a Restricted Subsidiary of all or substantially all of the assets of such Restricted Subsidiary in compliance with the terms of this Indenture that restricts distributions by that Restricted Subsidiary pending such sale or other disposition;

(9) Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(10) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 hereof and Liens permitted to be incurred pursuant to the provisions of Section 4.12 hereof;

(11) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements, limited liability company organizational documents and other similar agreements (including agreements entered into in connection with a Permitted Investment or pursuant to Section 4.07 hereof), which limitation is applicable only to the assets that are the subject of such agreements;

(12) restrictions on cash, Cash Equivalents or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(13) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(14) any Restricted Investment not prohibited by Section 4.07 hereof and any Permitted Investment;

(15) any encumbrance or restriction of a Securitization Entity effected in connection with a Qualified Securitization Transaction; *provided*, *however*, that such restrictions apply only to such Securitization Entity;

(16) other Indebtedness, Disqualified Stock or preferred stock of Non-Guarantor Subsidiaries that is incurred or issued subsequent to the Issue Date pursuant to Section 4.09 hereof;

(17) any encumbrance or restriction with respect to an Unrestricted Subsidiary pursuant to or by reason of an agreement that the Unrestricted Subsidiary is a party to or entered into before the date on which such Unrestricted Subsidiary became a Restricted Subsidiary of the Issuer; *provided* that such agreement was not entered into in anticipation of the Unrestricted Subsidiary becoming a Restricted Subsidiary of the Issuer and any such encumbrance or restriction does not extend to any assets or property of the Issuer of any Restricted Subsidiary other than the assets and property of such Unrestricted Subsidiary;

(18) provisions with respect to the receipt of a rebate on an operating lease until all obligations due to a lessor on other operating leases are satisfied or other customary restrictions in respect of assets or contract rights acquired by a Restricted Subsidiary of the Issuer in connection with a Sale/Leaseback Transaction;

(19) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Issuer or any Restricted Subsidiary of the Issuer or the ability of the Issuer or such Restricted Subsidiary to realize such value, or to make any distributions relating to such property or assets in each case in any material respect; and

(20) any encumbrances or restrictions of the type referred to in Sections 4.08(a)(1), (2) and (3) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (19) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, not materially more restrictive as a whole with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this covenant, (i) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common shares shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary of the Issuer to other Indebtedness incurred by the Issuer or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

Section 4.09 *Incurrence of Indebtedness and Issuance of Disqualified Stock or Preferred Stock.*

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Issuer will not issue any Disqualified Stock and will not permit (a) any of its Restricted Subsidiaries to issue any shares of Disqualified Stock or (b) any Non-Guarantor Subsidiaries to issue any shares of preferred stock; *provided*, *however*, that the Issuer and any Restricted Subsidiary of the Issuer may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and any Non-Guarantor Subsidiary of the Issuer may issue shares of preferred stock, if (1) the Fixed Charge Coverage Ratio for the Issuer's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued or the date of determination, as the case may be, would have been at least 2.0 to 1.0 or, if less than 2.0 to 1.0, is equal to or greater than the Fixed Charge Coverage Ratio immediately prior to such incurrence or issuance or (2) the Consolidated Total Debt Ratio for the Issuer and its Restricted Subsidiaries, calculated as of the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued or the date of determination, would have been less than or equal to 7.00 to 1.00 or, if greater than 7.00 to 1.00, is equal to or less than the Consolidated Total Debt Ratio immediately prior to such incurrence or issuance (such Indebtedness, Disqualified Stock or preferred stock incurred or issued pursuant to subclauses (1) or (2), "*Ratio Debt*"); *provided* that the aggregate principal amount of Indebtedness that may be incurred as Ratio Debt by Restricted Subsidiaries that are not Guarantors shall not exceed the greater of (x) $250.0 million and (y) 75.0% of Consolidated EBITDA at any one time outstanding.

(b) The provisions of Section 4.09(a) hereof will not prohibit the incurrence of any of the following (collectively, "*Permitted Debt*"):

(1) the incurrence by the Issuer or its Restricted Subsidiaries of Indebtedness or Disqualified Stock or the issuance by its Non-Guarantor Subsidiaries of preferred stock under any Credit Agreement, the guarantees thereof and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate principal amount or liquidation preference, if applicable, not to exceed at any one time outstanding, the greater of (i) (x) $750.0 million plus (y) the greater of (1) $200.0 million and (2) 60.0% of Consolidated EBITDA and (ii) the Borrowing Base as of the date of such incurrence or issuance;

plus, in the case of any refinancing of any Indebtedness permitted under this clause (1) or any portion thereof, any Additional Refinancing Amount;

(2) Indebtedness of the Issuer and its Restricted Subsidiaries existing on the Issue Date immediately after giving effect to the Transactions (excluding Indebtedness described in clauses (1) and (3) of this Section 4.09(b));

(3) the incurrence by the Issuer and its Restricted Subsidiaries (including any future Guarantors) of Indebtedness represented by the Notes issued on the Issue Date and the Note Guarantees;

(4) Indebtedness, Disqualified Stock or preferred stock incurred by the Issuer or any of its Restricted Subsidiaries, including Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations (including such Indebtedness as lessee or guarantor), in each case, incurred for the purpose of financing all or any part of the acquisition, lease or cost of design, construction, installation, repair, replacement or improvement of property, plant or equipment used or useful in a Permitted Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount or liquidation preference, including all Indebtedness incurred or Disqualified Stock or preferred stock issued, to Refinance (as defined below) any Indebtedness incurred pursuant to this clause (4), not to exceed the greater of (x) $150.0 million and (y) 45.0% of Consolidated EBITDA, at any one time outstanding, *plus*, in the case of any Refinancing of any Indebtedness, Disqualified Stock or preferred stock permitted under this clause (4) or any portion thereof,

Additional Refinancing Amounts (it being understood that any Indebtedness, Disqualified Stock or preferred stock incurred pursuant to this clause (4) shall cease to be deemed incurred or outstanding pursuant to this clause (4) but shall be deemed incurred and outstanding as Ratio Debt from and after the first date on which the Issuer or such Restricted Subsidiary, as the case may be, could have incurred such Indebtedness or issued such Disqualified Stock or preferred stock as Ratio Debt);

(5) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness or Disqualified Stock or preferred stock of the Issuer or a Restricted Subsidiary that serves to refund, refinance, replace, redeem, repurchase, retire, discharge or defease (collectively, "*Refinance*"), and is in an aggregate principal amount (or if issued with original issue discount an aggregate issue price) that is equal to or less than, Indebtedness incurred or Disqualified Stock or preferred stock issued as Ratio Debt or permitted under clauses (2), (3), this clause (5), (13) or (17) of this Section 4.09(b) or subclause (y) of each of clauses (4), (12), (21), (24), (28) or (29) of this Section 4.09(b) (provided that any amounts incurred under this Section 4.09(b)(5) as Refinancing Indebtedness of subclause (y) of Section 4.09(b)(4), (12), (21), (24) or (28) shall reduce the amount available under such clauses so long as such Refinancing Indebtedness remains outstanding) or any Indebtedness incurred or Disqualified Stock or preferred stock issued to so Refinance such Indebtedness, Disqualified Stock or preferred stock, *plus* any Additional Refinancing Amount (subject to the following proviso, "*Refinancing Indebtedness*") prior to its respective maturity; *provided*, *however*, that such Refinancing Indebtedness:

(a) has 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 Indebtedness, Disqualified Stock or preferred stock being refunded, refinanced, replaced, redeemed, repurchased or retired;

(b) has a Stated Maturity that is no earlier than the Stated Maturity of the Indebtedness being Refinanced;

(c) to the extent that such Refinancing Indebtedness Refinances (i) Subordinated Indebtedness, such Refinancing Indebtedness is Subordinated Indebtedness, or (ii) Disqualified Stock or preferred stock, such Refinancing Indebtedness is Disqualified Stock or preferred stock, respectively;

(d) shall not include (x) Indebtedness, Disqualified Stock or preferred stock of a Non-Guarantor Subsidiary that Refinances Indebtedness, Disqualified Stock or preferred stock of the Issuer or a Subsidiary Guarantor, or (y) Indebtedness or Disqualified Stock of the Issuer or Indebtedness, Disqualified Stock or preferred stock of a Restricted Subsidiary that Refinances Indebtedness, Disqualified Stock or preferred stock of an Unrestricted Subsidiary; and

(e) to the extent such Refinancing Indebtedness is Secured Indebtedness, the Liens securing such Refinancing Indebtedness have a Lien priority equal to or junior to the Liens securing the Indebtedness being refunded, refinanced, replaced, redeemed, repurchased or retired;

(6) the incurrence by the Issuer or any of its Restricted Subsidiaries of intercompany Indebtedness and cash management pooling obligations and arrangements between or among the Issuer and any of its Restricted Subsidiaries; *provided*, *however*, that:

(A) if the Issuer or any Subsidiary Guarantor is the obligor on such Indebtedness (other than cash management pooling obligations and arrangements) and the payee is not the Issuer or a Subsidiary Guarantor, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Issuer, or the Note Guarantee, in the case of a Subsidiary Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer will be deemed, in each case, to constitute an issuance of such Indebtedness by the Issuer or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 4.09(b)(6);

(7) the issuance by any of the Issuer's Restricted Subsidiaries to the Issuer or to any other Restricted Subsidiary of the Issuer of shares of preferred stock; *provided*, *however*, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer,

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this Section 4.09(b)(7);

(8) the incurrence by the Issuer or any of the Issuer's Restricted Subsidiaries of Hedging Obligations or Treasury Management Arrangement in the ordinary course of business and not for speculative purposes;

(9) the guarantee by the Issuer or any Restricted Subsidiary of the Issuer of Indebtedness and cash management pooling obligations and arrangements of the Issuer or a Restricted Subsidiary of the Issuer, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this covenant; *provided* that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the Notes, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed;

(10) the incurrence by the Issuer or any of the Issuer's Restricted Subsidiaries of Indebtedness in respect of letters of credit, bank guarantees, workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance or self-insurance obligations, bankers' acceptances, guarantees, performance, surety, statutory, appeal, completion, export or import, indemnities, customs, revenue bonds or similar instruments in the ordinary course of business, including guarantees or obligations with respect thereto (in each case other than for an obligation for money borrowed); *provided, however*, that upon the drawing of any letters of credit, such obligations are reimbursed within 60 days following such drawing;

(11) the incurrence by the Issuer or any of the Issuer's Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds;

(12) the incurrence of Indebtedness by Non-Guarantor Subsidiaries or the issuance by Non-Guarantor Subsidiaries of Disqualified Stock or preferred stock in an aggregate principal amount or liquidation preference, as applicable, pursuant to this Section 4.09(b)(12), including all Indebtedness of Non-Guarantor Subsidiaries incurred or Disqualified Stock or preferred stock of Non-Guarantor Subsidiaries issued to Refinance any Indebtedness incurred pursuant to this Section 4.09(b)(12), not to exceed the greater of (x) $150.0 million and (y) 45.0% of Consolidated EBITDA, *plus* in the case of any Refinancing of any Indebtedness, Disqualified Stock or preferred stock permitted under this Section 4.09(b)(12) or any portion thereof, the aggregate amount of fees, original issue discount, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection therewith, at any one time outstanding (it being understood that any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(12) shall cease to be deemed incurred, issued or outstanding pursuant to this Section 4.09(b)(12) but shall be deemed incurred or issued and outstanding as Ratio Debt from and after the first date on which such Non-Guarantor Subsidiary could have incurred such Indebtedness or issued such Disqualified Stock or preferred stock as Ratio Debt (to the extent such Non-Guarantor Subsidiary is able to incur any Liens related thereto as Permitted Liens after such reclassification));

(13) (a) Indebtedness, Disqualified Stock or preferred stock (i) of the Issuer or any of its Restricted Subsidiaries incurred or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person (including

any merger, consolidation or amalgamation of such Person with the Issuer or any of its Restricted Subsidiaries) and (ii) of any Person that is acquired by the Issuer or any of its Restricted Subsidiaries or merged into or consolidated or amalgamated with the Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture and (b) Indebtedness, Disqualified Stock or preferred stock incurred or assumed in anticipation of an acquisition of any assets, business or Person; *provided*, *however*, that after giving effect to such acquisition, merger, consolidation or amalgamation and the incurrence of such Indebtedness either:

(i) the Issuer would be permitted to incur at least $1.00 of additional Indebtedness as Ratio Debt;

(ii) the Fixed Charge Coverage Ratio of the Issuer would be equal to or greater than immediately prior to such acquisition, merger, consolidation or amalgamation; or

(iii) the Consolidated Total Debt Ratio of the Issuer would be equal to or less than immediately prior to such acquisition, merger, consolidation or amalgamation;

(14) the incurrence by the Issuer or its Restricted Subsidiaries of Indebtedness arising from agreements providing for indemnification, adjustment of purchase or acquisition price, earn outs or similar obligations, incurred in connection with the Transactions or the acquisition or disposition of any business, assets or Restricted Subsidiary of the Issuer (other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition);

(15) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness arising in connection with endorsement of instruments for collection or deposit (including customary Treasury Management Arrangements) in the ordinary course of business;

(16) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness consisting of obligations to pay insurance premiums in an amount not to exceed the annual premiums in respect of such insurance premiums at any one time outstanding;

(17) Contribution Indebtedness; *provided* that any Indebtedness of the Issuer or any Restricted Subsidiary of the Issuer incurred pursuant to this Section 4.09(b)(17) shall cease to be deemed incurred or outstanding for purposes of this Section 4.09(b)(17) but shall be deemed incurred as Ratio Debt from and after the first date on which the Issuer or any Restricted Subsidiary of the Issuer could have incurred such Indebtedness as Ratio Debt without reliance on this Section 4.09(b)(17);

(18) Indebtedness or Disqualified Stock of the Issuer or any of its Restricted Subsidiaries or preferred stock of any Non-Guarantor Subsidiary, the proceeds of which are applied to defease or discharge the Notes in accordance with Article 8 or 11 hereof;

(19) take-or-pay obligations contained in supply arrangements entered into by the Issuer or a Restricted Subsidiary of the Issuer in the ordinary course of business;

(20) Indebtedness related to unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law;

(21) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness incurred or the issuance by the Issuer or any of its Restricted Subsidiaries of Disqualified Stock or the issuance by any Restricted Subsidiary of preferred stock in an aggregate principal amount (or accreted value, as applicable) or liquidation value at any time outstanding, including all Indebtedness incurred or Disqualified Stock or preferred stock issued to Refinance any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this clause (21), not to exceed the greater of (x) $300.0 million and (y) 90.0% of Consolidated EBITDA, at any one time outstanding, *plus* in the case of any Refinancing of any Indebtedness permitted under this clause or any portion thereof, Additional Refinancing Amounts; *provided* that any Indebtedness of the Issuer or any Restricted Subsidiary of the Issuer incurred and any Disqualified Stock or preferred stock issued pursuant to this clause (21) shall cease to be deemed incurred or outstanding for purposes of this clause (21) but shall be deemed incurred or issued, as applicable, as Ratio Debt from and after the first date on which the Issuer or any Restricted Subsidiary of the Issuer could have incurred such Indebtedness or issued such Disqualified Stock or preferred stock as Ratio Debt without reliance on this clause (21);

(22) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit or bank guarantee issued pursuant to any Credit Agreement in a principal amount not in excess of the stated amount of such letter of credit;

(23) Indebtedness, Disqualified Stock or preferred stock incurred by the Issuer or any Restricted Subsidiary to future, current or former employees, officers, directors, managers, consultants and independent contractors thereof or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses or former spouses or permitted transferees, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent of the Issuer to the extent permitted under Section 4.07 hereof;

(24) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness incurred or Disqualified Stock or preferred stock issued on behalf of, or representing Guarantees of Indebtedness incurred or Disqualified Stock or preferred stock issued by, joint ventures; *provided* that the aggregate principal amount of Indebtedness incurred or guaranteed or Disqualified Stock or preferred stock issued or guaranteed pursuant to this Section 4.09(b)(24), including all Indebtedness incurred or Disqualified Stock or preferred stock issued to Refinance any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(24), does not exceed the greater of (x) $40.0 million and (y) 12.0% of Consolidated EBITDA at any one time outstanding *plus*, in the case of any Refinancing of any Indebtedness, Disqualified Stock or preferred stock permitted under this Section 4.09(b)(24) or any portion thereof, Additional Refinancing Amounts (it being understood that any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(24) shall cease to be deemed incurred, issued or outstanding pursuant to this Section 4.09(b)(24) but shall be deemed incurred or issued and outstanding as Ratio Debt from and after the first date on which the Issuer or its Restricted Subsidiary, as the case may be, could have incurred or guaranteed such Indebtedness or issued or guaranteed such Disqualified Stock or preferred stock as Ratio Debt (to the extent the Issuer or such Restricted Subsidiary is able to incur any Liens related thereto as Permitted Liens after such reclassification));

(25) Indebtedness, Disqualified Stock or preferred stock consisting of obligations of the Issuer or any Restricted Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions or any Permitted Investment;

(26) (i) guarantees incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners and (ii) Indebtedness incurred by the Issuer or a Restricted Subsidiary as a result of leases entered into by the Issuer or such Restricted Subsidiary or any direct or indirect parent of the Issuer in the ordinary course of business;

(27) (i) Indebtedness incurred by a Securitization Entity in a Qualified Securitization Transaction that is not recourse to the Issuer or any Restricted Subsidiary other than a Securitization Entity (except for Standard Securitization Undertakings) and (ii) to the extent constituting Indebtedness, obligations incurred in connection with the disposition by the Issuer and/or any Restricted Subsidiary of any account receivable in connection with factoring or other similar arrangements;

(28) Indebtedness, Disqualified Stock or preferred stock of the Issuer or any of its Restricted Subsidiaries incurred to finance or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person in an aggregate principal amount or liquidation preference, including all Indebtedness incurred or Disqualified Stock or preferred stock issued to Refinance any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(28), that does not exceed the greater of (x) $150.0 million and (y) 45.0% of Consolidated EBITDA, at any one time outstanding *plus*, in the case of any Refinancing of any Indebtedness, Disqualified Stock or preferred stock permitted under this Section 4.09(b)(28) or any portion thereof, Additional Refinancing Amounts (it being understood that any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(28) shall cease to be deemed incurred, issued or outstanding pursuant to this Section 4.09(b)(28) but shall be deemed incurred or issued and outstanding as Ratio Debt from and after the first date on which the Issuer or its Restricted Subsidiary, as the case may be, could have incurred such Indebtedness or issued such Disqualified Stock or preferred stock as Ratio Debt (to the extent the Issuer or such Restricted Subsidiary is able to incur any Liens related thereto as Permitted Liens after such reclassification)); and

(29) unsecured Indebtedness of the Issuer or any Subsidiary Guarantor in the form of ESG (environmental, social and corporate governance) bonds in an aggregate principal amount, including all Indebtedness incurred to Refinance any Indebtedness incurred pursuant to this Section 4.09(b)(29), not to exceed the greater of (x) $150.0 million and (y) 45.0% of Consolidated EBITDA, at any time outstanding, plus in the case of any Refinancing of any Indebtedness permitted under this clause or any portion thereof, Additional Refinancing Amount (it being understood that any Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to this Section 4.09(b)(29) shall cease to be deemed incurred, issued or outstanding pursuant to this Section 4.09(b)(29) but shall be deemed incurred or issued and outstanding as Ratio Debt from and after the first date on which the Issuer or its Restricted Subsidiary, as the case may be, could have incurred such Indebtedness or issued such Disqualified Stock or preferred stock as Ratio Debt).

(c) The Issuer will not incur, and will not permit any Subsidiary Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Issuer or such Subsidiary Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms; *provided*, *however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Restricted Subsidiary solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.

(d) For purposes of determining compliance with this Section 4.09, in the event that an item of Indebtedness or any Disqualified Stock or preferred stock meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (29) above, or is entitled to be incurred or issued as Ratio Debt, the Issuer will be permitted to classify, divide or reclassify such item of Indebtedness or Disqualified Stock or preferred stock on the date of determination or its incurrence or issuance, or later reclassify all or a portion of such item of Indebtedness or Disqualified Stock or preferred stock, in any manner that complies with this Section 4.09; *provided* that Indebtedness under the ABL Credit Agreement outstanding on the Issue Date will be deemed to have been incurred in reliance on the exception provided by clause (1) of the definition of "Permitted Debt" and may not be reclassified with any repayments of revolving Indebtedness outstanding under the ABL Credit Agreement being deemed to first reduce such Indebtedness outstanding as of the Issue Date. The accrual of interest or dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on preferred stock or Disqualified Stock in the form of additional shares of preferred stock or Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of preferred stock or Disqualified Stock for purposes of this Section 4.09 or Section 4.12 hereof; *provided*, in each such case, that the amount thereof shall be included in Fixed Charges of the Issuer as accrued. For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or the issuance of Disqualified Stock or preferred stock, the U.S. dollar-equivalent principal amount of Indebtedness or the liquidation preference of Disqualified Stock or preferred stock denominated in a foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving or delayed draw Indebtedness, or first issued, in the case of Disqualified Stock or preferred stock, or, in each case, at the option of the borrower or issuer of such Indebtedness, Disqualified Stock or preferred stock, the date on which the rate of interest and other pricing terms of such Indebtedness, Disqualified Stock or preferred stock are determined or the date of determination; *provided* that if such Indebtedness, Disqualified Stock or preferred stock is Indebtedness incurred or Disqualified Stock or preferred stock issued to Refinance other Indebtedness, Disqualified Stock or preferred stock denominated in a foreign currency (or in a different currency from such Indebtedness so being incurred or Disqualified Stock or preferred stock being issued), and such Refinancing would cause the applicable clauses of the definition of Permitted Debt (or categories of Permitted Liens) measured by a dollar amount or by reference to a percentage of Consolidated EBITDA to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such Refinancing, such clauses of the definition of Permitted Debt (or categories of Permitted Liens) measured by a dollar amount or by reference to a percentage of Consolidated EBITDA shall be deemed not to have been exceeded so long as the principal amount of such Indebtedness or liquidation preference of such Disqualified Stock or preferred stock does not exceed (i) the outstanding or, in the case of revolving Indebtedness, committed, principal amount of such Indebtedness or the liquidation preference of such Disqualified Stock or preferred stock being Refinanced *plus* (ii) the aggregate amount of Additional Refinancing Amounts incurred or payable in connection with such Refinancing. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness, Disqualified Stock or preferred stock that the Issuer or any Restricted Subsidiary of the Issuer may incur or issue pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

(e) For purposes of calculating any ratio-based basket, with respect to any revolving Indebtedness, delayed draw facility or other committed debt financing incurred under such ratio-based basket, the Issuer may elect (which election may not be changed with respect to

such Indebtedness), at any time, to either (x) give pro forma effect to the incurrence of the entire committed amount of such Indebtedness, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with any ratio-based component of any provision of this Indenture, or (y) give pro forma effect to the incurrence of the actual amount drawn under such revolving Indebtedness, delayed draw facility or other committed debt financing, in which case, the ability to incur the amounts committed to under such Indebtedness will be subject to such ratio-based basket (to the extent being incurred pursuant to such ratio) at the time of each such incurrence. For purposes of determining compliance with, and the outstanding principal amount or liquidation preference, as applicable, of any particular Indebtedness incurred or Disqualified Stock or preferred stock issued pursuant to and in compliance with, this Section 4.09, if any commitments in respect of revolving or deferred draw Indebtedness are established in reliance on any clause of the definition of Permitted Debt measured by reference to a percentage of Consolidated EBITDA, at the Issuer's option, on the date of the initial borrowing of such Indebtedness or entry into the definitive agreement providing the commitment to fund such Indebtedness after giving pro forma effect to the incurrence of the entire committed amount of such Indebtedness (such committed amount, a "*Grower Tested Committed Amount*") may thereafter be borrowed and reborrowed, in whole or in part, from time to time, irrespective of whether or not such incurrence would cause such percentage of Consolidated EBITDA to be exceeded and such Grower Tested Committed Amount shall be deemed outstanding pursuant to such basket so long as such commitments are in effect. If any Indebtedness is incurred or any Disqualified Stock or preferred stock is issued to Refinance Indebtedness (or unutilized commitments in respect of Indebtedness) initially incurred (or established) or Disqualified Stock or preferred stock issued (or to Refinance Indebtedness incurred (or commitments established) or Disqualified Stock or preferred stock issued) to Refinance Indebtedness initially incurred (or commitments initially established) or Disqualified Stock or preferred stock initially issued in reliance on any clause or clauses of the definition of Permitted Debt measured by reference to a percentage of Consolidated EBITDA or a ratio-based basket at the time of incurrence or issuance, and such Refinancing would cause such percentage of Consolidated EBITDA to be exceeded or ratio to be unmet if calculated on the date of such Refinancing, such percentage of Consolidated EBITDA or ratio shall not be deemed to be exceeded or unmet (and such Indebtedness, Disqualified Stock or preferred stock shall be deemed permitted) so long as the principal amount or the liquidation preference of such Indebtedness, Disqualified Stock or preferred stock does not exceed an amount equal to the principal amount or liquidation preference of such Indebtedness, Disqualified Stock or preferred stock being Refinanced, *plus* Additional Refinancing Amounts in connection with such Refinancing.

(f) Notwithstanding anything in this Indenture to the contrary, unless the Issuer elects otherwise, if, on any date, the Issuer or any of its Restricted Subsidiaries in connection with any transaction or series of related transactions (A) incurs Indebtedness or issues Disqualified Stock or preferred stock as permitted by a ratio-based or ratio-referent clause or provision and (B) incurs Indebtedness or issues Disqualified Stock or preferred stock under a non-ratio-based or non-ratio-referent clause or provision, then the applicable ratio shall be calculated on such date with respect to any incurrence under the applicable ratio-based or ratio-referent clause or provision without giving effect to the incurrence under such non-ratio-based or non-ratio-referent clause or provision made in connection with such transaction or series of related transactions.

(g) If Indebtedness originally incurred or Disqualified Stock or preferred stock originally issued in reliance upon a percentage of Consolidated EBITDA or the Maximum Incremental Leverage Amount under clause (1) of Section 4.09(b) hereof is being refinanced under such clause (1) and such refinancing would cause the maximum amount of Indebtedness, Disqualified Stock or preferred stock thereunder to be exceeded at such time, then such refinancing will nevertheless be permitted thereunder and such additional Indebtedness, Disqualified Stock or preferred stock will be deemed to have been incurred, and permitted to be incurred, under such clause (1) so long as the principal amount or the liquidation preference of such refinancing Indebtedness, Disqualified Stock or preferred stock does not exceed an amount equal to the principal amount or liquidation preference of Indebtedness, Disqualified Stock or preferred stock being refinanced plus Additional Refinancing Amounts in connection with such refinancing.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such assets at the date of determination; and

(B) the amount of the Indebtedness of the other Person.

Section 4.10 *Asset Sales.*

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Issuer (or the 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) at the time of the Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the aggregate consideration received in the Asset Sale, together with all other Asset Sales since the Issue Date (on a cumulative basis) by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities (other than liabilities that are by their terms subordinated to the Notes or any Note Guarantee) of the Issuer or such Restricted Subsidiary (as shown on the Issuer's or such Restricted Subsidiary's most recent consolidated balance sheet (or in the notes thereto) for which internal financial statements are available immediately preceding such date or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Issuer's or such Restricted Subsidiary's balance sheet (or in the notes thereto) if such incurrence or accrual had taken place on or prior to the date of such balance sheet in the good faith determination of the Issuer) that are extinguished in connection with the transactions relating to such Asset Sale, or that are assumed by the transferee of any such assets, in each case pursuant to an agreement that releases the Issuer or such Restricted Subsidiary from or indemnifies against further liability;

(B) any securities, notes, other obligations or assets received by the Issuer or such Restricted Subsidiary from such transferee that are, within 180 days, converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion;

(C) any Designated Non-cash Consideration received by the Issuer or such 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 Section 4.10(a)(2)(C) that is at that time outstanding, not to exceed the greater of (x) $120.0 million and (y) 35.0% of Consolidated EBITDA;

(D) consideration consisting of Indebtedness of the Issuer or such Restricted Subsidiary that is not Subordinated Indebtedness received from such transferee; and

(E) accounts receivable of a business retained by the Issuer or such Restricted Subsidiary, as the case may be, following the sale of such business; *provided* that such accounts receivable (1) are not past due more than 90 days and (2) do not have a payment date greater than 120 days from the date of the invoices creating such accounts receivable;

(3) to the extent that any consideration received by the Issuer (or such Restricted Subsidiary, as the case may be) in such Asset Sale constitutes property or other assets that are of a type or class that constitutes Collateral, such property or other assets are added to the Collateral securing the Notes in the manner and to the extent required by this Indenture or any of the Security Documents; and

(4) the Issuer or such Restricted Subsidiary has complied with the applicable provisions of this Indenture and the Security Documents.

(b) Within 450 days after the receipt of any Net Proceeds from an Asset Sale, the Issuer (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds at its option:

(1) (i) to repay Priority Lien Obligations of the Issuer or any Guarantor (including Obligations under the ABL Credit Agreement) and, if the Priority Lien Obligations being repaid is revolving credit Indebtedness, to correspondingly reduce

commitments with respect thereto or (ii) if the assets or property disposed of in the Asset Sale were not Collateral, to repay any Indebtedness of a Restricted Subsidiary of the Issuer that is not a Guarantor (other than Indebtedness owed to the Issuer or another Restricted Subsidiary);

(2) to repay (i) (x) Parity Lien Indebtedness, including the Notes, or (ii) if the assets or property disposed of in the Asset Sale were not consisting of Collateral, unsecured Indebtedness and other unsecured Obligations of the Issuer or a Guarantor that rank *pari passu* with the Notes or such Guarantor's Note Guarantee, as applicable (other than Indebtedness owed to the Issuer or a Restricted Subsidiary of the Issuer); *provided* that if the Issuer (or the applicable Restricted Subsidiary) shall so reduce Indebtedness other than the Notes, the Issuer shall equally and ratably redeem or repurchase the Notes pursuant to Section 3.07 hereof, through open-market purchases or in privately negotiated transactions at market prices (which may be below par), or by making an offer (in accordance with the procedures in Section 4.10(c)) to all Holders to purchase the Notes at 100% of the principal amount thereof, *plus* accrued and unpaid interest, if any, on the Notes repurchased, to (but not including) the date of repayment;

(3) to acquire all or substantially all of the assets of, or any Capital Stock of, a Permitted Business; *provided* that (a) in the case of any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Issuer or additional Capital Stock of an existing non-Wholly Owned Restricted Subsidiary and (b) in the case of any such acquisition of assets, to the extent the assets are of the type that would constitute Collateral, such assets are thereupon added to the Collateral following their acquisition;

(4) to make a capital expenditure;

(5) to make an investment in any one or more businesses properties or assets or acquire assets, in each case that are used or useful in a Permitted Business; *provided* that (a) to the extent that such investment, properties or assets are of the type that would constitute Collateral, such investment, properties or assets are thereupon added to the Collateral following such investment or acquisition and (b) such investment is made in accordance with the provisions of this Indenture; or

(6) any combination of the foregoing.

The Issuer (or the applicable Restricted Subsidiary, as the case may be) will be deemed to have complied with the provisions set forth in clause (3), (4), (5) or (6) of this Section 4.10(b) if, (i) within 450 days after the Asset Sale that generated the Net Proceeds, the Issuer (or the applicable Restricted Subsidiary) has entered into and not abandoned or rejected a binding agreement to make an investment or payment in compliance with the provisions described in the immediately preceding paragraph, and that investment or payment is thereafter completed within 180 days after the end of such 450-day period or (ii) in the event such binding agreement described in the preceding clause (i) is cancelled or terminated for any reason before such Net Proceeds are applied, the Issuer (or the applicable Restricted Subsidiary) enters into another such binding commitment within 180 days of such cancellation or termination of the prior binding commitment; *provided* that if any second binding commitment is later cancelled or terminated for any reason before such Net Proceeds are applied within 180 days of such second binding commitment, then such Net Proceeds shall constitute Excess Proceeds.

Notwithstanding the foregoing, to the extent a distribution of any or all of the Net Proceeds of any Asset Sales by a Foreign Subsidiary to the Issuer or another Restricted Subsidiary (i) is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other organizational or administrative impediments from being repatriated to the United States or (ii) would have a material adverse tax consequence, as reasonably determined by the Issuer, an amount equal to the portion of such Net Proceeds so affected will not be required to be applied in compliance with this Section 4.10; *provided* that if at any time within one year following the date on which an amount equal to such affected Net Proceeds would otherwise have been required to be applied pursuant to this Section 4.10, distribution of any of such affected Net Proceeds is no longer prohibited or delayed by applicable local law, restricted by any applicable organizational document or agreement, subject to other organizational or administrative impediment from being repatriated to the United States, and would not result in a material adverse tax consequences, then an amount equal to such amount of Net Proceeds so permitted to be repatriated will be promptly applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated, whether or not they are repatriated) in compliance with this Section 4.10. The non-application of any prepayment amounts as a consequence of the foregoing provisions shall not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt, nothing in this Indenture shall be construed to require the Issuer or any Foreign Subsidiary to repatriate cash or to apply any Net Proceeds described in clause (i) above in

compliance with this Section 4.10 in the event that such repatriation is not permitted under applicable local law, applicable organizational documents or agreements or other impediment within one year following the date on which the respective payment would otherwise have been required.

Pending the final application of any such amount of Net Proceeds, the Issuer or any Restricted Subsidiary may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest or utilize such Net Proceeds in any manner not prohibited by this Indenture and the Security Documents.

(c) Any Net Proceeds that are not applied or invested as provided in Section 4.10(b) (but excluding for the avoidance of doubt any such proceeds not required to be applied or invested as a result of the fourth paragraph of this covenant) will constitute "*Excess Proceeds*"; *provided* that any amount of proceeds offered to Holders in accordance with Section 4.10(b)(2) or pursuant to an Asset Sale Offer made at any time after the Asset Sale shall be deemed to have been applied as required and shall not be deemed to be Excess Proceeds without regard to the extent to which such offer is accepted by the Holders. When the aggregate amount of Excess Proceeds exceeds the greater of (x) $100.0 million and (y) 30.0% of Consolidated EBITDA, within 30 days thereof, the Issuer shall make an Asset Sale Offer to all Holders of the Notes and, if required by the terms of any Parity Lien Indebtedness and, if the assets or property disposed of in the Asset Sale was not Collateral, Indebtedness of the Issuer or any Guarantor that ranks *pari passu* with the Notes and contains provisions similar to those set forth in this Indenture with respect to offers to purchase, prepay or redeem with the proceeds of sales of assets, to purchase, prepay or redeem on a pro rata basis the maximum principal amount (or accreted value, if applicable) of Notes, Parity Lien Indebtedness and such other *pari passu* Indebtedness (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased, prepaid or redeemed out of such Excess Proceeds at an offer price, in the case of the Notes, in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase, prepayment or redemption, subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the purchase date, and will be payable in cash. The Issuer may satisfy the foregoing obligations with respect to such Excess Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Excess Proceeds at any time prior to the expiration of the application period or by electing to make an Asset Sale Offer with respect to such Excess Proceeds.

If any Excess Proceeds remain after consummation of an Asset Sale Offer (any such amount, "*Retained Declined Proceeds*"), the Issuer may use those Retained Declined Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes, Parity Lien Indebtedness and other *pari passu* Indebtedness, as applicable, tendered in (or required to be prepaid or redeemed in connection with) such Asset Sale Offer exceeds the amount of Excess Proceeds, the Issuer will select the Notes, Parity Lien Indebtedness and such other *pari passu* Indebtedness to be purchased on a pro rata basis, based on the amounts tendered or required to be prepaid or redeemed and thereafter the Issuer will select the Notes to be purchased on a pro rata basis (subject to applicable DTC procedures with respect to the Global Notes) based on the principal amount tendered (with, in each case, such adjustments as may be deemed appropriate by the Issuer so that only Notes in minimum denominations of $2,000, or an integral multiple of $1,000 in excess thereof, will be purchased; *provided* that any unpurchased portion of a Note must be in a minimum denomination of $2,000). Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(d) The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of this Indenture by virtue of such compliance.

Section 4.11 *Transactions with Affiliates.*

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries 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 Issuer involving aggregate payments or consideration in excess of the greater of (x) $30.0 million and (y) 10.0% of Consolidated EBITDA (each, an "*Affiliate Transaction*"), unless:

(1) the Affiliate Transaction is on terms that are not materially less favorable, taken as a whole, to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person (as determined in good faith by the senior management or the Board of Directors of the Issuer or any direct or indirect parent of the Issuer); and

(2) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of the greater of (x) $50.0 million and (y) 15.0% of Consolidated EBITDA, the terms of the Affiliate Transaction have been approved by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer or such Restricted Subsidiary, as applicable.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) hereof:

(1) any reasonable or customary employment agreement, consulting agreement, severance agreement, employee benefit plan, compensation arrangement, officer or director indemnification agreement or any similar arrangement entered into by, or policy of, the Issuer or any of its Restricted Subsidiaries and payments pursuant thereto;

(2) (a) transactions between or among the Issuer and/or its Restricted Subsidiaries, (b) transactions effected as part of a Qualified Securitization Transaction and (c) any merger, amalgamation or consolidation of the Issuer and any direct or indirect parent of the Issuer; provided that such parent entity shall have no material liabilities and no material assets (other than cash, Cash Equivalents and the Capital Stock of the Issuer) and such merger, amalgamation or consolidation is otherwise in compliance with the terms of this Indenture and effected for a bona fide business purpose;

(3) transactions with a Person (other than an Unrestricted Subsidiary of the Issuer) that is an Affiliate of the Issuer solely because the Issuer owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(4) payment of fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of officers, directors, employees, independent contractors or consultants of the Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer;

(5) any sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent company of the Issuer to Affiliates of the Issuer and the granting of registration and other customary rights in connection therewith, and the performance by the Issuer or any of its Restricted Subsidiaries of its obligations with respect thereto;

(6) (a) Restricted Payments that do not violate Section 4.07 hereof and (b) Permitted Investments, in the case of clauses (a) and (b), including fees and expenses related thereto;

(7) the performance by the Issuer and its Restricted Subsidiaries of their respective obligations under, or payments in respect of, the Acquisition Agreement, the Advisory Agreement, limited liability company, limited partnership or other constitutive document or security holders agreement or other agreements disclosed in the Offering Memorandum under "Certain Relationships and Related Party Transactions," each as in effect within 30 days of the Issue Date, and the payment of fees and expenses not in excess of the amounts specified in, or determined pursuant to, such agreements, as in effect within 30 days of the Issue Date; *provided*, *however*, that the existence of, or the performance by the Issuer and its Restricted Subsidiaries of their respective obligations under, any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such existing agreement together with all amendments thereto, taken as a whole, or new agreement are not otherwise more disadvantageous (as determined in good faith by the senior management or the Board of Directors of the Issuer or any direct or indirect parent of the Issuer) to the Holders of the Notes in any material respect than the original agreement as in effect within 30 days of the Issue Date;

(8) if such Affiliate Transaction is with a Person in its capacity as a holder of Indebtedness, Disqualified Stock, preferred stock or Capital Stock of the Issuer or any Restricted Subsidiary of the Issuer where such Person is treated no more favorably than the other holders of Indebtedness, Disqualified Stock, preferred stock or Capital Stock of the Issuer or any Restricted Subsidiary of the Issuer;

(9) transactions with an Affiliate where the only consideration paid is Qualifying Equity Interests of the Issuer;

(10) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, deliver to the Trustee a letter from an Independent Financial Advisor stating that such transaction (i) is fair to the Issuer or such Restricted Subsidiary from a financial point of view or (ii) meets the requirements of Section 4.11(a)(1) hereof;

(11) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to employees, officers, directors, consultants or independent contractors of the Issuer or any of its Restricted Subsidiaries or any direct or indirect parent of the Issuer in the ordinary course of business;

(12) any agreement as in effect as of the Issue Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous in any material respect (as determined in good faith by the senior management or the Board of Directors of the Issuer or any direct or indirect parent of the Issuer) to the Holders of the Notes in any material respect than the original agreement as in effect on the Issue Date) or any transaction contemplated thereby;

(13) transactions with joint ventures entered into in the ordinary course of business;

(14) any contributions to the common equity capital of the Issuer or any investments by the Principals or a direct or indirect parent of the Issuer in Equity Interests (other than Disqualified Stock of the Issuer) of the Issuer (and payment of reasonable out-of-pocket expenses incurred by the Principals or a direct or indirect parent of the Issuer in connection therewith);

(15) (x) guarantees of performance by the Issuer and its Restricted Subsidiaries of Unrestricted Subsidiaries in the ordinary course of business, except for guarantees of Indebtedness in respect of borrowed money, and (y) pledges of Equity Interests of Unrestricted Subsidiaries;

(16) any issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer, or of a Restricted Subsidiary of the Issuer, as appropriate, in good faith;

(17) the entry into any tax-sharing arrangements between the Issuer or any of its Restricted Subsidiaries and any of their direct or indirect parents; *provided*, *however*, that any payment made by the Issuer or any of its Restricted Subsidiaries under such tax-sharing arrangements is, at the time made, otherwise permitted by Section 4.07 hereof;

(18) transactions with Unrestricted Subsidiaries, customers, clients, lessors, landlords, suppliers, contractors, or purchasers or sellers of goods or services that are Affiliates, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Issuer and its Restricted Subsidiaries, or made in the reasonable determination of senior management or the Board of Directors of the Issuer or any direct or indirect parent of the Issuer;

(19) transactions between the Issuer or any of its Restricted Subsidiaries and any Person who is a director and who is also a director of the Issuer or any direct or indirect parent of the Issuer; *provided*, *however*, that such director abstains from voting as a director of the Issuer or such direct or indirect parent, as the case may be, on any matter involving such other Person;

(20) payments by the Issuer or any of its Restricted Subsidiaries to or on behalf of the Principals for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without

limitation, in connection with the acquisitions or divestitures, which payments are approved in good faith by a majority of the Board of Directors of the Issuer or any direct or indirect parent of the Issuer;

(21) sales of accounts receivable or other transactions effected in connection with a Securitization Transaction;

(22) transactions pursuant to, and complying with Section 5.01(b) hereof; and

(23) the Transactions and the payment of any fees or expenses related thereto or to fund amounts owed to Affiliates in connection therewith (including dividends, payments or loans made to any direct or indirect parent of the Issuer to fund payment of any such fees or expenses).

Section 4.12 *Liens.*

(a) The Issuer will not, and will not permit any Subsidiary Guarantor, if any, to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind (other than Permitted Liens), securing Indebtedness of the Issuer or such Subsidiary Guarantor, if any, on any property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom. If the Issuer or any Subsidiary Guarantor creates any Lien upon any property or assets that are not at such time Collateral in order to secure any Priority Lien Obligations or Parity Lien Indebtedness (other than customary liens on cash collateral in connection with the ABL Credit Agreement and other revolving credit facilities), it must concurrently grant a second-priority or pari passu priority Lien, respectively, upon such property or assets that would constitute Collateral for the Notes or the Note Guarantees, such that the property or assets subject to such Lien will constitute Collateral under this Indenture and the Security Documents, subject, in each case, to local law limitations and Permitted Liens.

(b) Any Lien created for the benefit of the Holders of the Notes pursuant to this Section 4.12 shall be deemed automatically and unconditionally released and discharged upon (i) the release of the Lien that gave rise to the obligation to secure the Notes, (ii) in the case of any such Lien in favor of any Note Guarantee, the termination and discharge of such Note Guarantee in accordance with the terms of this Indenture, (iii) any sale, exchange or transfer (other than a transfer constituting a transfer of all or substantially all of the assets of the Issuer that is governed by Section 5.01 hereof) to any Person not an Affiliate of the Issuer of the property or assets secured by such Lien, or of all of the Capital Stock held by the Issuer or any of its Restricted Subsidiaries in, or all or substantially all the assets of, any Restricted Subsidiary creating such Lien or (iv) upon such asset becoming collateral under any document governing Floorplan Indebtedness pursuant to the terms thereof unless and so long as such asset continues to secure any Priority Lien Obligations or other Parity Lien Indebtedness.

(c) For purposes of determining compliance with this Section 4.12, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of Permitted Liens described in definition of "Permitted Liens" or pursuant to Section 4.12(a) hereof but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens described in the definition of "Permitted Liens" or pursuant to Section 4.12(a) hereof, the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing each item of Indebtedness (or any portion thereof) in any manner that complies with Section 4.12 and will only be required to include the amount and type of such Lien or such item of Indebtedness secured by such Lien in one of the clauses of the definition of "Permitted Liens" and such Lien securing such item of Indebtedness will be treated as being incurred or existing pursuant to only one of such clauses or pursuant to Section 4.12(a) hereof.

(d) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence thereof, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

Section 4.13 *Corporate Existence.*

Subject to Article 5 hereof, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate or other existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuer or any such Restricted Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Issuer and its Subsidiaries; *provided*, *however*, that the Issuer shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Issuer's Subsidiaries, if the Board of Directors of the Issuer shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole.

Section 4.14 *Offer to Repurchase Upon Change of Control.*

(a) If a Change of Control occurs after the Issue Date, each Holder of Notes will have the right to require the Issuer to repurchase all or any portion (equal to a minimum denomination of $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes pursuant to a Change of Control Offer on the terms set forth in this Indenture; *provided* that any unpurchased portion of a Note must be in a minimum denomination of $2,000. In the Change of Control Offer, the Issuer will offer a payment (the "*Change of Control Payment*") in cash equal to 101% of the aggregate principal amount of Notes repurchased, *plus* accrued and unpaid interest, if any, on the Notes repurchased to (but not including) the date of purchase (the "*Change of Control Payment Date*"), subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the Change of Control Payment Date. Prior to or within 30 days following any Change of Control, except to the extent the Issuer has delivered notice to the Trustee of its intention to redeem Notes pursuant to Section 3.07 hereof, the Issuer will mail (or with respect to Global Notes to the extent permitted or required by applicable DTC procedures or regulations, send electronically) a notice to each Holder (a "*Change of Control Offer*"), with a copy to the Trustee, describing the transaction or transactions that constitute, or are expected to constitute, the Change of Control and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes tendered will be accepted for payment;

(2) the Change of Control Payment and the Change of Control Payment Date, which date shall be no earlier than 10 days and no later than 90 days (unless delivered in advance of the occurrence of such Change of Control) from the date such notice is mailed or sent, pursuant to the procedures required by this Indenture;

(3) that any Note not tendered will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date (whether or not a Business Day);

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book entry), which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess thereof.

If such notice is delivered prior to the occurrence of a Change of Control, such notice shall state that the Change of Control Offer is conditioned upon the occurrence of such Change of Control and shall describe such condition, and, if applicable, shall state that, in the Issuer's sole discretion, the Change of Control Payment Date may be delayed until such time (including more than 90 days after the notice is mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or that such repurchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the Change

of Control Payment Date, or by the Change of Control Payment Date as so delayed. The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.14 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuer.

The Paying Agent will promptly deliver to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, together with the documents required under Sections 13.02 and 13.03 hereof, authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any. The Issuer will announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.14, the Issuer will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, (2) in connection with or in contemplation of any Change of Control, the Issuer (or any Affiliate of the Issuer) or a third party has made an offer to purchase at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer (an "*Alternate Offer*") any and all Notes validly tendered at a cash price equal to or higher than the Change of Control Payment and has purchased all Notes properly tendered in accordance with the terms of the Alternate Offer, or (3) notice of redemption pursuant to Section 3.07 hereof has been given to the Trustee, unless and until there is a default in payment of the applicable redemption price.

(d) Notwithstanding anything to the contrary contained herein, a Change of Control Offer or Alternate Offer may be made in advance of a Change of Control, and/or conditioned upon the consummation of such Change of Control.

(e) The Issuer's obligation to make a Change of Control Offer may be waived or modified or terminated with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the Notes) prior to the occurrence of such Change of Control.

Section 4.15 *Permitted Activities of Holdings.*

Holdings shall not engage in any business other than its ownership of the Capital Stock of, and the management of, the Issuer and, indirectly, its Subsidiaries and activities incidental thereto; *provided* that Holdings may engage in those activities that are incidental to (i) the maintenance of its existence in compliance with applicable law, (ii) legal, tax and accounting matters in connection with any of the foregoing or following activities, (iii) the entering into, and performing its obligations under, this Indenture, the Intercreditor Agreements, any other intercreditor agreement or security document related to Secured Indebtedness permitted to be incurred by this Indenture, the ABL Documents, the Security Documents, the Acquisition Agreement, the Advisory Agreement and the other definitive documentation entered into in connection with any of the foregoing, (iv) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (v) the making of dividends or distributions on its Equity Interests, (vi) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (vii) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (viii) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (ix) the performance of obligations under and

compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (x) the incurrence and payment of its operating and business expenses and any Taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on its behalf), (xi) the consummation of the Transactions, (xii) the making of loans to or other Investments in, or incurrence of Indebtedness from, the Issuer or in the case of incurrence of Indebtedness, from any Wholly-Owned Domestic Subsidiary which is a Subsidiary Guarantor) as and to the extent not prohibited by this Indenture and (xiii) any other activity expressly contemplated by this Indenture to be engaged in by Holdings, including, without limitation, repurchases of Indebtedness of the Issuer and entry into and performance of Guarantees of Indebtedness as permitted under the ABL Credit Agreement, and, subject to any applicable limitations set forth herein, other permitted Indebtedness of the Issuer and its Restricted Subsidiaries.

Section 4.16 *Future Guarantees*.

If, after the Issue Date, (a) any Subsidiary of the Issuer (including any newly formed, newly acquired or newly redesignated Restricted Subsidiary, but excluding any Securitization Entity and any Excluded Subsidiary) that is not then a Guarantor guarantees or incurs any Indebtedness under the ABL Credit Agreement or guarantees any other capital markets debt Indebtedness of the Issuer or another Guarantor that is in excess of $250.0 million or (b) the Issuer otherwise elects to have any Restricted Subsidiary become a Guarantor, then, in each such case, the Issuer shall cause such Restricted Subsidiary to execute and deliver to the Trustee a supplemental indenture to this Indenture pursuant to which such Restricted Subsidiary shall become a Guarantor under this Indenture providing for a Note Guarantee by such Restricted Subsidiary on the same terms and conditions as those set forth in this Indenture and applicable to the other Guarantors; *provided* that, in the case of clause (a), such supplemental indenture shall be executed and delivered to the Trustee within 20 Business Days of the date that such Indebtedness under the ABL Credit Agreement has been guaranteed or incurred by such Restricted Subsidiary.

Each Person that becomes a Guarantor after the Issue Date shall also become a party to the applicable Security Documents and shall as promptly as practicable execute and deliver such security instruments, financing statements, mortgages, deeds of trust and other related real estate deliverables (in substantially the same form as those executed and delivered with respect to the Collateral on the Issue Date or on the date first delivered in the case of Collateral delivered after the Issue Date (to the extent, and substantially in the form, delivered on the Issue Date or the date first delivered, as applicable (but no greater scope)) as may be necessary to vest in the Notes Collateral Agent a perfected second-priority security interest (subject to Permitted Liens) in properties and assets that constitute Collateral, as security for such Guarantor's Note Guarantee and as may be necessary to have such property or assets added to the Collateral as required under the Security Documents and this Indenture, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such properties and assets to the same extent and with the same force and effect.

Each Note Guarantee shall be released upon the terms and in accordance with the provisions of Article 10 hereof.

Section 4.17 *Designation of Restricted Subsidiaries and Unrestricted Subsidiaries.*

After the Issue Date, the Board of Directors of the Issuer or any direct or indirect parent of the Issuer may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If such Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments in such Restricted Subsidiary by the Issuer and its Restricted Subsidiaries will be deemed to be an Investment made as of the time of determination or the designation and will reduce the amount available for Restricted Payments under Section 4.07 hereof or under one or more clauses of the definition of "Permitted Investments," as determined by the Issuer. That designation will only be permitted if the Investment would be permitted at that time and if such Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

Any designation of a Restricted Subsidiary of the Issuer as an Unrestricted Subsidiary will be evidenced to the Trustee by delivering to the Trustee a certified copy of a resolution of the Board of Directors of the Issuer or any direct or indirect parent of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof or under one of more clauses of the definition of "Permitted Investments." If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness is not permitted to be incurred as of such date pursuant to Section 4.09 hereof, the Issuer will be in default of Section 4.09 hereof. The Board of Directors of the Issuer or any direct or indirect parent of the

Issuer may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted by Section 4.09 hereof, calculated on a Pro Forma Basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Default or Event of Default would be in existence following such designation. Any designation of an Unrestricted Subsidiary as a Restricted Subsidiary shall be evidenced to the Trustee by an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.09 hereof.

Section 4.18 *[Reserved]*.

Section 4.19 *Changes in Covenants When Notes Rated Investment Grade.*

If on any date following the Issue Date:

(1) the Notes have Investment Grade Ratings from both of the Ratings Agencies; and

(2) no Default or Event of Default (other than any Default or Event of Default under any covenant that would otherwise become a Suspended Covenant) shall have occurred and be continuing,

then, beginning on that day and continuing at all times thereafter and subject to the provisions of the second succeeding paragraph, (i) the Note Guarantees will be automatically and unconditionally released and discharged (to the extent that guarantees by the Guarantors of all other Priority Lien Obligations and Parity Lien Indebtedness are substantially concurrently released, and the Liens on the Collateral securing such Priority Lien Obligations and Parity Lien Indebtedness are also substantially concurrently released) and (ii) Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.15, 4.16, 4.17 and 5.01(4) hereof (collectively, the "*Suspended Covenants*") will be suspended.

During any period that the Suspended Covenants have been suspended, the Issuer's Board of Directors may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to Section 4.17 hereof unless the Issuer's Board of Directors would have been able, under the terms of this Indenture, to designate such Subsidiaries as Unrestricted Subsidiaries if the Suspended Covenants were not suspended. Notwithstanding that the Suspended Covenants may be reinstated, the failure to comply with the Suspended Covenants during the Suspension Period (including any action taken or omitted to be taken with respect thereto and including any actions taken at any time pursuant to any contractual obligations arising during the Suspension Period) will not give rise to a Default or Event of Default under this Indenture.

Notwithstanding the foregoing, if the Notes no longer have an Investment Grade Rating from both of the Ratings Agencies, the Suspended Covenants will be reinstituted as of and from the date of such rating decline (any such date, a "*Reversion Date*"). The period of time between the suspension of covenants as set forth above and the Reversion Date is referred to as the "*Suspension Period*." All Indebtedness incurred (including Acquired Debt) and Disqualified Stock or preferred stock issued during the Suspension Period will be deemed to have been incurred or issued in reliance on the exception provided by clause (2) of the definition of "Permitted Debt." Calculations under the reinstated Section 4.07 will be made as if Section 4.07 had been in effect prior to, but not during, the period that Section 4.07 was suspended as set forth above. For purposes of determining compliance with Section 4.10 hereof, the Excess Proceeds from all Asset Sales not applied in accordance with Section 4.10 hereof, will be deemed to be reset to zero after the Reversion Date. In addition, for purposes of Section 4.11 hereof, all agreements and arrangements entered into by the Issuer and any Restricted Subsidiary with an Affiliate of the Issuer during the Suspension Period prior to such Reversion Date will be deemed to have been entered pursuant to Section 4.11(b)(12), and for purposes of Section 4.08 hereof, all contracts entered into during the Suspension Period prior to such Reversion Date that contain any of the restrictions contemplated by such covenant will be deemed to have been entered pursuant to Section 4.08(b)(1) hereof.

During the Suspension Period, any reference in the definition of "Unrestricted Subsidiary" to Section 4.09 hereof or any provision thereof shall be construed as if such Section 4.09 had remained in effect since the Issue Date and during the Suspension Period.

Upon the Reversion Date, the obligation to grant Note Guarantees and Collateral pursuant to Section 4.16 hereof will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was incurred for purposes of Section 4.16 hereof).

Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period and the Issuer and its Restricted Subsidiaries will be permitted, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under this Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations following a Reversion Date and to consummate the transactions contemplated thereby; *provided* that such contractual commitments or obligations were entered into during the Suspension Period and not in contemplation of a reversion of the Suspended Covenants; *provided further* that, to the extent any such commitment or obligation results in the making of a Restricted Payment, such Restricted Payment shall be made under Section 4.07(a)(z) or Section 4.07(b) hereof and, if not permitted by any of such provisions, such Restricted Payment shall be deemed permitted under Section 4.07(a)(z) hereof and shall be deducted for purposes of calculating the amount pursuant to this Section 4.07(a)(z) (which may not be less than zero).

The Issuer shall provide an Officer's Certificate to the Trustee indicating the occurrence of any Suspension Period or Reversion Date. The Trustee shall have no obligation to monitor the ratings of the Notes, independently determine or verify if such events have occurred or notify the Holders of Notes of any Suspension Period or Reversion Date. The Trustee may provide a copy of such Officer's Certificate to any Holder of Notes upon written request.

Section 4.20 *[Reserved].*

Section 4.21 *[Reserved].*

Section 4.22 *Further Assurances.*

The Issuer and the Guarantors shall execute and file any and all further documents, financing statements (including continuation statements and amendments to financing statements), agreements and instruments, and take all further actions that may be required under applicable law, or that the Notes Collateral Agent or the Trustee may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Security Documents in the Collateral, subject to the exceptions set forth in this Indenture and the Security Documents. In addition, to the extent required under this Indenture or any of the Security Documents, from time to time, the Issuer and the Guarantors will reasonably promptly secure the obligations under this Indenture and Security Documents by pledging or creating, or causing to be pledged or created, perfected security interests and Liens with respect to the Collateral to the extent required by this Indenture and/or the Security Documents.

The Issuer and each Guarantor will, at its sole cost and expense, execute and deliver all such agreements and instruments as necessary, or as the Trustee or the Notes Collateral Agent reasonably requests, to more fully or accurately describe the assets and property intended to be Collateral or the Obligations intended to be secured by the Security Documents.

Section 4.23 *Maintenance of Collateral; Books and Records.*

(a) Subject to, and in compliance with, the provisions of Article 12 and the provisions of the applicable Security Documents, the Issuer and the Guarantors shall maintain the Collateral in good, safe and insurable operating order, condition and repair (ordinary wear and tear excepted) and do all other acts as may be reasonably necessary or appropriate to maintain and preserve the Collateral; *provided* that the Issuer shall not be obligated to make such repairs, renewals, replacements, betterments and improvements that would not result in a material adverse effect on the ability of the Issuer and the Guarantors to satisfy their obligations under the Notes, the Note Guarantees, this Indenture and the Security Documents.

(b) The Issuer shall use commercially reasonable efforts to maintain, and cause the Guarantors to use commercially reasonable efforts to maintain, insurance with responsible carriers against such risks and in such amounts, and with such deductibles, retentions, self-insured amounts and co-insurance provisions, as are customarily carried by similar businesses or similar size in the locations which

such business is conducted as determined by the Issuer in good faith; *provided* that, with respect to Collateral, the Issuer will, and will cause the Restricted Subsidiaries to, maintain insurance policies and coverage with reasonable policy limits and deductibles as may be necessary to adequately protect the Notes Collateral Agent's interests in the Collateral as determined by the Issuer in good faith (in any event, on terms at least as favorable as obtained for the benefit of, or as otherwise required by, the ABL Collateral Agent at any time); *provided*, that the requirements of this Section 4.23 shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs as to which a secured lender is not customarily granted an insurable interest therein as the ABL Collateral Agent may approve; and (y) self-insurance programs.

(c) Each insurance policy described in Section 4.23(b) shall provide that:

(1) if agreed by the insurer (which agreement the Issuer shall use commercially reasonable efforts to obtain) it may not be cancelled or otherwise terminated without at least thirty (30) days' prior written notice (or, with respect to non-payment of premiums, 10 days' prior written notice) to the Notes Collateral Agent;

(2) [reserved];

(3) [reserved]; and

(4) the Issuer will, and will cause each of the Restricted Subsidiaries to, at all times keep its tangible property constituting Collateral insured in favor of the Notes Collateral Agent, and will use its commercially reasonable efforts to have all liability and property policies or certificates (or certified copies thereof) with respect to such insurance, at all times after the time required under the ABL Credit Agreement, endorsed in a customary manner to the Notes Collateral Agent (including, without limitation, by naming the Notes Collateral Agent as loss payee and/or additional insured).

(d) On an annual basis, to the extent of any changes thereto or pending expiration thereof during such year, the Grantors shall deliver to the Trustee and the Notes Collateral Agent an insurance policy or policies renewing or extending such expiring insurance policy or policies or renewal or extension insurance certificates or other reasonable evidence of renewal or extension providing that the insurance policies are in full force and effect.

(e) The Grantors shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with the insurance policies required to be maintained under this Section 4.23 unless Holdings and its Restricted Subsidiaries use commercially reasonable efforts to ensure that the Notes Collateral Agent is included thereon as an additional insured and, if applicable, with loss payable to the Notes Collateral Agent under an endorsement containing the provisions described in Section 4.23(c). The Grantors shall immediately notify the Trustee and Notes Collateral Agent whenever any such separate insurance policy is obtained and shall promptly deliver to the Trustee and Notes Collateral Agent the insurance policy or insurance certificate evidencing such insurance.

(f) The Grantors may maintain coverages required by Section 4.23 under blanket policies covering the Collateral and other locations owned or operated by the Grantors or an Affiliate of the Grantors if the terms of such blanket policies otherwise comply with the provisions of Section 4.23(b) and contain specific coverage allocations in respect of the premises complying with the provisions of Section 4.23(b).

(g) If there shall occur any event of loss that has a fair market value (or replacement cost, if greater) in excess of $10.0 million, the applicable Grantor shall promptly send to the Trustee and Notes Collateral Agent a written notice setting forth the nature and extent of such event of loss.

Section 4.24 *Impairment of Security Interest.*

Neither the Issuer nor any of its Restricted Subsidiaries will (i) take, or knowingly or negligently omit to take, any action which would materially adversely affect or impair the Liens in favor of the Notes Collateral Agent and the Holders of Notes with respect to the Collateral unless such action or failure to take action is otherwise permitted by this Indenture or the Security Documents or (ii) grant any Person, or permit any Person to retain (other than the Notes Collateral Agent), any Liens on the Collateral, other than Permitted Liens or Liens permitted pursuant to Section 4.12.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation or Sale of Assets.*

(a) The Issuer will not, directly or indirectly: (1) consolidate or merge with or into another Person, (2) consummate a Division as the Dividing Person (whether or not the Issuer is the surviving entity) or (3) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person (other than in connection with the Transactions), unless:

(1) either: (a) the Issuer is the surviving Person; or (b) the Person formed by or surviving any such consolidation, merger or Division (if other than the Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is an entity organized or existing under the laws of the United States, any state of the United States or the District of Columbia (such Person, the "*Surviving Entity*");

(2) the Surviving Entity (if other than the Issuer) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Issuer under the Notes and this Indenture, pursuant to a supplemental indenture, and the Security Documents pursuant to the terms thereof, as applicable;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) the Issuer or the Surviving Entity would, after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, (a) be permitted to incur at least $1.00 of additional Indebtedness as Ratio Debt, (b) have had a Fixed Charge Coverage Ratio equal to or greater than the actual Fixed Charge Coverage Ratio for the Issuer for such four-quarter period or (c) have had a Consolidated Total Debt Ratio equal to or less than such ratio for the Issuer for such four-quarter period;

(5) the Surviving Entity (if other than the Issuer) shall deliver, or cause to be delivered, to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger, Division, sale, conveyance, assignment, transfer, lease or other disposition complies with the requirements of this Indenture;

(6) to the extent any property or assets of the Surviving Entity are property or assets of the type that would constitute Collateral under the Security Documents, the Surviving Entity shall take such action as may be reasonably necessary or required to cause such property and assets to be made subject to a Lien securing the Notes pursuant to this Indenture and the Security Documents in the manner and to the extent required by this Indenture or any of the Security Documents and shall take all reasonably necessary action so that such Lien is perfected, preserved and protected to the extent required by this Indenture and the Security Documents;

(7) the Collateral owned by or sold, assigned, conveyed, leased, transferred or otherwise disposed of to the Surviving Entity shall (a) continue to constitute Collateral under this Indenture and the Security Documents, (b) be subject to the Lien in favor of the Notes Collateral Agent for the benefit of the Trustee and the Holders of the Notes and (c) not be subject to any Lien other than Permitted Liens or other Liens as permitted pursuant to Section 4.12 hereof; and

(8) the Surviving Entity (if other than the Issuer) shall become a party to the Intercreditor Agreements by joinder or supplement.

(b) Section 5.01(a) will not apply to any sale, assignment, transfer, conveyance, lease, Division or other disposition of assets between or among the Issuer and any Guarantor or any transfer of title or other disposition of assets subject to or pursuant to any Floorplan Financing Agreement. Clauses (3) and (4) of Section 5.01(a) will not apply to (a) any merger, consolidation or amalgamation of any Restricted Subsidiary with or into the Issuer, (b) any consolidation, amalgamation or merger of the Issuer into, or sale, assignment, transfer, lease, conveyance or other disposition of all or part of the properties and assets of the Issuer to, any Guarantor, (c) a merger, consolidation or amalgamation of the Issuer with or into an Affiliate for the purpose of reincorporating the Issuer in another jurisdiction so

long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby or (d) the conversion of the Issuer or a Restricted Subsidiary into a corporation, partnership, limited partnership, limited liability company or trust, organized or existing under the laws of the United States, any state thereof or the District of Columbia. In addition, the Issuer or any Restricted Subsidiary may change its name.

Section 5.02 *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance, Division or other disposition of all or substantially all of the properties or assets of the Issuer in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, (a) the successor Person formed by such consolidation or into or with which the Issuer is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition or Division is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance, Division or other disposition, the provisions of this Indenture referring to the "Issuer" shall refer instead to the successor Person and not to the Issuer), and may exercise every right and power of the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein; and (b) the Issuer or such predecessor Person, as the case may be, (except in the case of a lease) shall be released from its obligations under this Indenture and the Notes.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*"*:*

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in the payment when due (at maturity, upon redemption, offer to purchase or otherwise) of the principal of, or premium, if any, on, the Notes;

(3) failure by the Issuer or any of its Restricted Subsidiaries for 60 days after notice by the Trustee to the Issuer or by the Holders of at least 30% in aggregate principal amount of the Notes then outstanding to the Issuer and the Trustee to comply with any of the agreements in this Indenture (other than a default referred to in clause (1) or (2) of this Section 6.01) or the Security Documents; *provided* that in the case of a failure to comply with Section 4.03 hereof, such period of continuance of such default or breach shall be 120 days after written notice described in this clause (3) has been given;

(4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for borrowed money (other than Indebtedness owed to the Issuer or any of its Restricted Subsidiaries or any Affiliate) of the Issuer or any of the Issuer's Restricted Subsidiaries that is a Significant Subsidiary (or the payment of which is guaranteed by the Issuer or any of the Issuer's Restricted Subsidiaries that is a Significant Subsidiary), whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, if that default:

(a) is caused by a failure to pay principal of, or premium, if any, on any such Indebtedness at final Stated Maturity (after giving effect to any applicable grace periods) (a "*Payment Default*"); or

(b) results in the acceleration of such Indebtedness prior to its express maturity, and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates at least the greater of (x) $100.0 million and (y) 30.0% of Consolidated EBITDA;

(5) failure by the Issuer or any of the Issuer's Restricted Subsidiaries that is a Significant Subsidiary to pay final non-appealable judgments entered by a court or courts of competent jurisdiction aggregating in excess of the greater of (x) $100.0 million and (y) 30.0% of Consolidated EBITDA (other than any judgments covered by indemnities or insurance policies

issued by reputable companies), which judgments are not paid, discharged or stayed, for a period of 60 days, after the applicable judgment becomes final and non-appealable;

(6) the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) admits in writing its inability to pay its debts as they become due;

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(8) except as permitted by this Indenture, any Note Guarantee of a Significant Subsidiary of the Issuer is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect (except as contemplated by the terms of this Indenture), or any Significant Subsidiary of the Issuer, or any Person acting on behalf of such Significant Subsidiary of the Issuer, denies or disaffirms its obligations under its Note Guarantee and any such Default continues for 10 days;

(9) (x) any material provision of any Security Document or Intercreditor Agreement with respect to the Notes, at any time, (a) ceases to be in full force and effect for any reason other than in accordance with the terms of this Indenture, the Security Documents and the Intercreditor Agreements or (b) is declared invalid or unenforceable by a court of competent jurisdiction, (y) the Issuer or any Guarantor contests in writing the validity or enforceability of any material provision of any Security Document or any Intercreditor Agreement or (z) the Issuer or any Guarantor denies in writing that it has any further liability under this Indenture or any Security Document or any Intercreditor Agreement or gives written notice to revoke or rescind any Security Document or the perfected second-priority Liens, as applicable, created thereby with respect to the Notes, other than in accordance with the terms of this Indenture, the Security Documents and the Intercreditor Agreements; or

(10) any Security Document covering a material portion of the Collateral for any reason (other than pursuant to the terms thereof) ceases to create a valid and perfected second-priority Lien, on, and security interest in, any material Collateral covered thereby with respect to the Notes, subject to Permitted Liens, except to the extent that any such perfection or priority is not required pursuant to this Indenture and the Security Documents or results from the failure of the Notes Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents.

Section 6.02 *Acceleration.*

In the case of an Event of Default specified in clause (6) or (7) of Section 6.01 hereof, with respect to either the Issuer, any Restricted Subsidiary of the Issuer that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes by notice to the Issuer (with a copy to the Trustee if given by Holders of Notes) may declare all the Notes to be due and payable immediately.

Any notice of Default, notice of acceleration or instruction to the Trustee or Notes Collateral Agent, as applicable, to provide a notice of Default, notice of acceleration or take any other action (a "*Noteholder Direction*") provided by any one or more holders (other than a Regulated Bank, an Initial Purchaser or its Affiliates) (each a "*Directing Holder*") must be accompanied by a written representation from each such holder delivered to the Issuer and the Trustee and Notes Collateral Agent, as applicable, that such holder is not (or, in the case such holder is DTC or its nominee, that such holder is being instructed solely by beneficial owners that have represented to such Holder that they are not) Net Short (a "*Position Representation*"), which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default shall be deemed a continuing representation at all times until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Issuer with such other information as the Issuer may reasonably request from time to time in order to verify the accuracy of such holder's Position Representation within five Business Days of request therefor (a "*Verification Covenant*"). In any case in which the holder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of DTC or its nominee and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee or Notes Collateral Agent, as applicable.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Issuer determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Issuer has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter if, without the participation of such holder, the percentage of Notes held by the remaining holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Issuer provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such holder, the percentage of Notes held by the remaining holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio (other than any indemnity such Directing Holder may have offered the Trustee and Notes Collateral Agent, as applicable), with the effect that such Default or Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee and Notes Collateral Agent, if applicable, shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default. Notwithstanding anything in the preceding two paragraphs to the contrary, any Noteholder Direction delivered to the Trustee or Notes Collateral Agent, as applicable, during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the foregoing paragraphs. In addition, for the avoidance of doubt, the foregoing paragraphs shall not apply to any holder that is a Regulated Bank, an Initial Purchaser or its Affiliates; provided that if a Regulated Bank, an Initial Purchaser or its Affiliates is a Directing Holder or a beneficial owner directing DTC it shall provide a written representation to the Issuer that it is a Regulated Bank an Initial Purchaser or its Affiliates.

For the avoidance of doubt, each of the Trustee and Notes Collateral Agent shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with the Indenture and shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long

Derivative Instruments, Short Derivative Instruments or otherwise. Neither the Trustee nor the Notes Collateral Agent shall have any liability to the Issuer, any Holder or any other Person in acting in good faith on a Noteholder Direction.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders of all the Notes, rescind an acceleration and its consequences under this Indenture, if the rescission would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of principal of, premium on, if any, or interest, if any, on, the Notes (except nonpayment of principal, premium, if any, or interest on the Notes that became due solely because of the acceleration of the Notes) and if all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid.

In the event of a declaration of acceleration of the Notes because an Event of Default has occurred and is continuing as a result of the acceleration of any Indebtedness described in Section 6.01(4) hereof (excluding any resulting Payment Default under this Indenture or the Notes), the declaration of acceleration of the Notes shall be automatically annulled if such Indebtedness is paid or otherwise acquired or retired or the Holders of all Indebtedness described in Section 6.01(4) hereof have rescinded or waived the declaration of acceleration in respect of such Indebtedness within 30 Business Days of the date of such declaration of acceleration of the Notes, and if the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction, and all existing Events of Default, except non-payment of principal or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived and all amounts owing to the Trustee have been paid.

Section 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, premium on, if any, or interest on, the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 *Waiver of Past Defaults*.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture, except a continuing Default or Event of Default in the payment of principal of, premium on, if any, or interest on, the Notes; *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related Payment Default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

If a Default is deemed to occur solely as a consequence of the existence of another Default (the "*Initial Default*"), then, at the time such Initial Default is cured, the Default that resulted solely because of that Initial Default will also be cured without any further action.

Section 6.05 *Control by Majority*.

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability (it being understood that the Trustee does not have an affirmative duty to determine whether any such action is prejudicial to any Holder).

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal or interest, if any, when due, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes (subject to the Intercreditor Agreements) unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default has occurred and is continuing;

(2) Holders of at least 30% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer and, if requested, provide to the Trustee or the Notes Collateral Agent security and/or indemnity satisfactory to the Trustee or the Notes Collateral Agent, as applicable, against any loss, liability or expense;

(4) the Trustee does not comply with such request within 60 days after receipt of the notice, request and the offer of security and/or indemnity; and

(5) during such 60-day period, Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal of, or interest on, the Note, on or after the respective due dates expressed or provided for in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer or any Guarantor for the whole amount of principal of and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Restoration of Rights and Remedies*.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been determined or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings or any other proceedings, the Issuer, any Guarantor, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies hereunder of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.10 *Trustee May File Proofs of Claim*.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and Notes Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, Notes Collateral Agent and their agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer or any Guarantor (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and Notes Collateral Agent any amount due to each of them for the reasonable compensation, expenses, disbursements and advances of the Trustee, Notes Collateral

Agent, their agents and counsel, and any other amounts due the Trustee and Notes Collateral Agent under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee Notes Collateral Agent under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.11 *Priorities*.

If the Trustee collects any money pursuant to this Article 6 or, after an Event of Default, any money or other property distributable in respect of the Issuer's obligations under this Indenture, it shall pay out the money or distribute the property in the following order:

First: to the Trustee (including any predecessor trustee), Notes Collateral Agent, their agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and Notes Collateral Agent and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, if any, respectively; and

Third: to the Issuer or to such party as a court of competent jurisdiction shall direct.

The Trustee, upon written notice to the Issuer, may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.11.

Section 6.12 *Undertaking for Costs*.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing and is actually known to the Responsible Officer of the Trustee, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of gross negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (however the Trustee shall have no obligation to verify the mathematical calculations contained therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee or Notes Collateral Agent to expend or risk its own funds or incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and/or security against such risk or liability is not reasonably assured to it.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law. The Trustee shall have no obligation to invest funds received by it pursuant to this Indenture.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any document (whether in its original, facsimile or electronic form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both, except that (x) no Officer's Certificate or Opinion of Counsel will be required to be furnished to the Trustee in connection with the authentication and delivery of the Initial Notes on the Issue Date and (y) no Opinion of Counsel will be required to be furnished to the Trustee in connection with the execution of any amendment or supplement in the form of Exhibit D adding a new Guarantor under this Indenture or evidencing the release of a Guarantor pursuant to Section 10.07 hereof. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer will be sufficient if signed by an Officer of the Issuer.

(f) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered, and if requested, provided to the Trustee indemnity and/or security satisfactory to the Trustee against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be required to give any note, bond or surety in respect of the trusts and powers under this Indenture.

(h) The Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in such certificate previously delivered and not superseded.

(i) Delivery of reports, information and documents to the Trustee described in Section 4.03 hereof is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's or the Guarantors' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officer's Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

(j) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) The Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture and states that it is a "Notice of Default".

(l) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, by the Notes Collateral Agent and each agent, custodian and other Person employed to act hereunder.

(m) Neither the Trustee nor the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or the Private Placement Legend or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants, members or Beneficial Owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(n) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document.

(o) The permissive right of the Trustee to take actions that are permitted, but not required, by this Indenture or the other Note Documents shall not be construed as an obligation or duty to do so.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. However, in the event that the Trustee

acquires any conflicting interest as defined in the TIA it must eliminate such conflict within 90 days or resign. Any Agent and the Notes Collateral Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 hereof.

Section 7.04 *Trustee's Disclaimer.*

Neither the Trustee nor the Notes Collateral Agent shall be responsible for, and neither the Trustee nor the Notes Collateral Agent makes any representation as to the validity or adequacy of this Indenture or the Notes, nor shall either be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture. The Trustee shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication. Neither the Trustee nor the Notes Collateral Agent shall be responsible for making any calculation with respect to any matter under this Indenture. Neither the Trustee nor Notes Collateral Agent shall have any duty to monitor or investigate the Issuer's compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee or Notes Collateral Agent, as the case may be, made in this Indenture.

Neither the Trustee nor the Notes Collateral Agent shall be responsible for, and make no representation as to the existence, genuineness, value or protection of, any Collateral, for the legality, effectiveness or sufficiency of any Security Document or for the creation, perfection, priority, sufficiency or protection of any Liens securing the Notes. Neither the Trustee nor the Notes Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Lien or security interest in the Collateral.

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail (or with respect to Global Notes, to the extent permitted or required by applicable DTC procedures or regulations, send electronically) to Holders of Notes a notice of the Default or Event of Default within 90 days after the Trustee obtains knowledge thereof. Except in the case of a Default or Event of Default in payment of principal of, premium on, if any, or interest on, any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 *[Reserved].*

Section 7.07 *Compensation and Indemnity.*

(a) The Issuer will pay to the Trustee from time to time compensation as is agreed to from time to time by the Issuer and the Trustee for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuer will reimburse the Trustee promptly upon request for all reasonable out-of-pocket disbursements, advances and expenses incurred or made by it in addition to the compensation for its services except for any such disbursements, advance or expense as shall have been caused by the Trustee's gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. Such expenses will include the reasonable out-of-pocket compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Issuer and the Guarantors will indemnify on a joint and several basis the Trustee (including its officers, directors, employees and agents) against any and all losses, liabilities or expenses, including fees and expenses of counsel, including Taxes (other than Taxes based upon, measured by or determined by the income of the Trustee), incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the reasonable costs and expenses of enforcing this Indenture and the Note Documents against the Issuer and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Issuer, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. The Trustee will notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer will not relieve the Issuer or any of the Guarantors of their obligations hereunder. The Issuer or such Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee

may have separate counsel and the Issuer will pay the reasonable fees and out-of-pocket expenses of such counsel. Neither the Issuer nor any Guarantor needs to pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Issuer and the Guarantors under this Section 7.07 will survive the satisfaction and discharge of this Indenture, the resignation or removal of the Trustee and the termination for any reason of this Indenture.

(d) To secure the Issuer's and the Guarantors' payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium on, if any, or interest on, particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture, the resignation or removal of the Trustee and the termination for any reason of this Indenture.

(e) Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services after an Event of Default specified in clauses (6) and (7) of Section 6.01 hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) "Trustee" for purposes of this Section shall include the Notes Collateral Agent and any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 7.08 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign at any time upon 30 days' prior written notice to the Issuer and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuer with 30 days' prior written notice. The Issuer may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Issuer will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail (or with respect to Global Notes, to the extent permitted or

required by applicable DTC procedures or regulations, send electronically) a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's and the Guarantors' obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act will be the successor Trustee.

Section 7.10 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a corporation or national banking association organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Issuer may at any time elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes (including the Note Guarantees), and the Liens with respect to the Notes released, upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuer and each of the Guarantors, if any, will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note Guarantees), and the Liens with respect to the Notes released, on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuer and the Guarantors, if any, will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees) and the Liens with respect to the Notes released, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute such instruments reasonably requested by the Issuer acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, premium on, if any, and interest, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Issuer's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee and the Notes Collateral Agent hereunder, and the Issuer's and the Guarantors', if any, obligations in connection therewith (including, without limitation, those contained in Article 7 hereof); and

(4) this Article 8.

Subject to compliance with this Article 8, the Issuer may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof. Notwithstanding anything to the contrary contained herein, the Issuer's and the Guarantors' obligations under Section 7.07 shall survive a Legal Defeasance.

Section 8.03 *Covenant Defeasance.*

Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuer and the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.03, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.14, 4.15, 4.16, 4.17, 4.22, 4.23 and 4.24 hereof and clauses (3) and (4) of Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), the Note Guarantees will be released pursuant to Section 10.07 hereof and the Notes and Note Guarantees will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes and the Note Guarantees will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Issuer and the Guarantors, if any, may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) (to the extent relating to the covenants that are subject to Covenant Defeasance), (4), (5), (8), (9) and (10) hereof will not constitute Events of Default. Notwithstanding anything to the contrary contained herein, the Issuer's and the Guarantors' obligations under Section 7.07 shall survive a Covenant Defeasance.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, (x) cash in U.S. dollars in an amount, (y) non-callable Government Securities, the scheduled payments of principal of and interest thereon will be in an amount, or (z) a combination thereof in amounts, as will be sufficient, without consideration of any reinvestment of interest, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, premium on, if any, and interest, if any, on, the outstanding Notes to the stated date for payment thereof or to the applicable redemption date, as the case may be, and all interest, if any, accrued to such dates, and the Issuer must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) the Issuer must deliver to the Trustee, (a) in the case of Legal Defeasance, an Opinion of Counsel to the effect that (i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm, that the Beneficial Owners of outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred; and (b) in the case of Covenant Defeasance, an Opinion of Counsel to the effect that the Beneficial Owners of outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(3) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit (and any similar concurrent deposit relating to other Indebtedness), and the granting of Liens to secure such borrowings);

(4) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of or constitute a default under, any material agreement or instrument (other than this Indenture and the agreements governing any other Indebtedness being defeased, discharged or replaced) to which the Issuer or any of the Guarantors is a party or by which the Issuer or any of the Guarantors is bound;

(5) the Issuer must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders of Notes over the other creditors of the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or others; and

(6) the Issuer must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Issuer will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to the Issuer*.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium on, if any, or interest, if any, on, any Note and remaining unclaimed for two years after such principal, premium, if any, or interest, if any, has become due and payable shall be paid to the Issuer on its request, unless an abandoned property law designates another person, or (if then held by the Issuer) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in *The New York Times* and *The Wall Street Journal* (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided*, *however*, that, if the Issuer makes any payment of principal of, premium on, if any, or interest, if any, on, any Note following the reinstatement of its obligations, the Issuer will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 hereof, without the consent of any Holder of Notes, the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent, as applicable, may amend or supplement this Indenture, the Security Documents, the Intercreditor Agreements, the Notes or the Note Guarantees:

(1) to cure any ambiguity, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes, provided that such Notes are in registered form for purposes of Section 163(f) of the Code;

(3) to provide for the assumption of the Issuer's or any Guarantor's obligations to Holders of Notes and Note Guarantees in the case of a merger, consolidation, amalgamation or Division or sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the Issuer's or such Guarantor's assets, as applicable;

(4) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights under this Indenture of any Holder;

(5) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture under the TIA, if applicable;

(6) to conform the text of this Indenture, the Notes, the Note Guarantees, the Security Documents or the Intercreditor Agreements to any provision of the "Description of the Notes" section of the Offering Memorandum;

(7) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture;

(8) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes, the Security Documents or the Intercreditor Agreements, in each case, in accordance with the terms of this Indenture; or

(9) to add or release Note Guarantees in accordance with the terms of this Indenture and to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or Intercreditor Agreements, or any release of Collateral pursuant to the terms of this Indenture or any of the Security Documents or Intercreditor Agreements;

(10) to secure additional extensions of credit and add additional secured creditors holding other Parity Lien Indebtedness so long as such Parity Lien Indebtedness is not prohibited by the provisions of this Indenture or any other then-existing Parity Lien Indebtedness; or

(11) to add additional assets as Collateral.

In addition, the Holders of the Notes shall be deemed to have consented for purposes of the Security Documents and the Intercreditor Agreements to any of the following amendments and other modifications to the Security Documents or Intercreditor Agreements:

(1) (a) to add other parties (or any authorized agent thereof or trustee therefor) holding Priority Lien Obligations or Parity Lien Indebtedness that is incurred in compliance with the ABL Credit Agreement, this Indenture, the Security Documents and the Intercreditor Agreements and (b) to establish that the Liens on any Collateral securing such Priority Lien Obligations or Parity Lien Indebtedness shall be prior to, or pari passu with, as applicable, liens securing the Notes under the Intercreditor Agreements with the Liens on such Collateral securing the Obligations under this Indenture, the Notes and the Note Guarantees, all on the terms provided for in the Intercreditor Agreements in effect immediately prior to such amendment or other modification; and

(2) to establish that the Liens on any Collateral securing any Indebtedness replacing the ABL Credit Agreement permitted to be incurred under this Indenture shall be senior to the Liens on such Collateral securing any Obligations under this Indenture, the Notes and the Note Guarantees, all on the terms provided for in the ABL Intercreditor Agreement in effect immediately prior to such amendment or other modification.

Upon the request of the Issuer accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee and Notes Collateral Agent, if applicable, of the documents described in Section 7.02, 9.06, 13.02 and 13.03 hereof, the Trustee and Notes Collateral Agent, if applicable, will join with the Issuer and the Guarantors, if any, in the execution of any amended or supplemental indenture and amendment or supplement to the Security Documents or Intercreditor Agreements authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee or Notes Collateral Agent, if applicable, will not be obligated to enter into such amended or supplemental indenture or amendment or supplement to the Security Documents or the Intercreditor Agreements that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holder of Notes.*

Except as provided below in this Section 9.02, the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent may amend or supplement this Indenture (including, without limitation, Sections 3.09, 4.10 and 4.14 hereof), the Notes, the Note Guarantees, the Security Documents or the Intercreditor Agreements may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes other than the Notes beneficially owned by the Issuer or its Affiliates (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium on, if any, or interest, if any, on, the Notes, except a Payment Default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Note Guarantees, the Security Documents or the Intercreditor Agreements, may be waived with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes other than the Notes beneficially owned by the Issuer or its Affiliates (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Sections 2.08 and 2.09 hereof shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02; *provided* that (x) if any such amendment or waiver will only affect one series of Notes (or less than all series of Notes) then outstanding under this Indenture, then only the consent of the Holders of a majority in principal amount of the Notes of such series then outstanding (including, in each case, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes) shall be required and (y) if any such amendment or waiver by its terms will affect a series of Notes in a manner different and materially adverse relative to the manner such amendment or waiver affects other series of Notes, then the consent of the Holders of a majority in principal amount of the Notes of such series then outstanding (including, in each case, consents obtained in connection with a tender offer or exchange offer for Notes) shall be required.

Upon the request of the Issuer accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02, 9.06, 13.02 and 13.03 hereof, the Trustee and Notes Collateral Agent, if applicable, will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture and amendment or supplement to the Security Documents unless such amended or supplemental indenture or amendment or supplement to the Security Documents affects the Trustee's and Notes Collateral Agent's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee and the Notes Collateral Agent may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture and amendment or supplement to the Security Documents.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer will mail (or with respect to Global Notes, to the extent permitted or required by applicable DTC procedures or regulations, send electronically) to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to deliver such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Issuer or Guarantors with any provision of this Indenture, the Notes or any Note Guarantees. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the Stated Maturity of any Note or alter or waive any of the provisions relating to the dates on which the Notes may be redeemed or the redemption price thereof with respect to the redemption of the Notes (other than any change to the notice periods with respect to such redemption);

(3) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(4) waive a Default or Event of Default in the payment of principal of, premium on, if any, or interest, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the Payment Default that resulted from such acceleration);

(5) make any Note payable in anything other than U.S. dollars;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, premium on, if any, or interest, if any, on, the Notes;

(7) subject to the final paragraph in Section 3.09, modify the obligation of the Issuer to repurchase Notes pursuant to Section 3.09, 4.10 or 4.14 hereof, after the date of an event giving rise to such repurchase obligation;

(8) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms of this Indenture;

(9) make any change in the preceding amendment and waiver provisions; or

(10) make any change to, or modify, the ranking of the Notes in respect of right of payment that would adversely affect the Holders of the Notes.

In addition, without the consent of the Holders of at least 66⅔% in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), no amendment, supplement or waiver may (1) have the effect of releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents (except as permitted by the terms of this Indenture, the Security Documents or the Intercreditor Agreements) or changing or altering the priority of the security interests of the Holders of the Notes in the Collateral under the Intercreditor Agreements, (2) make any change in the Security Documents, the Intercreditor Agreements or the provisions in this Indenture dealing with the application of proceeds of the Collateral that would adversely affect the Holders of the Notes or (3) modify the Security Documents or the provisions of this Indenture dealing with Collateral in any manner adverse to the Holders of the Notes in any material respect other than in accordance with the terms of this Indenture, the Security Documents or the Intercreditor Agreements; *provided* that (x) if any such amendment, supplement or waiver will only affect one series of Notes (or less than all series of the Notes) then outstanding under this Indenture, then only the consent of the Holders of at least 66⅔% in aggregate principal amount of the Notes of such series then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, such series of the Notes) shall be required.

Section 9.03 *[Reserved]*.

Section 9.04 *Revocation and Effect of Consents*.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date on which the Trustee receives an Officer's Certificate certifying that the Holders of the requisite principal amount of Notes have consented (and not theretofore revoked such consent) to the amendment, supplement or waiver. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 *Notation on or Exchange of Notes*.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 *Trustee to Sign Amendments, etc*.

The Trustee and Notes Collateral Agent, if applicable, will sign any amended or supplemental indenture and amendment or supplement to the Security Documents or the Intercreditor Agreements authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee or Notes Collateral Agent, as the case may be. The Issuer may not sign an amended or supplemental indenture until the Board of Directors of the Issuer approves it. In executing any amended or supplemental indenture, the Trustee and Notes Collateral Agent, if applicable, will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Sections 13.02 and 13.03 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture and amendment or supplement to the Security Documents or the Intercreditor Agreements is authorized or permitted by this Indenture and, in the case of an Opinion of Counsel, that such supplemental indenture constitutes the legally valid and binding obligation of the Issuer and the Guarantors, subject to customary exceptions. Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement in the form of Exhibit D adding a new Guarantor under this Indenture or releasing a Guarantee by a Guarantor pursuant to Section 10.07.

ARTICLE 10
NOTE GUARANTEES

Section 10.01 *Guarantee.*

(a) Subject to this Article 10, upon consummation of the Acquisition, each of the Guarantors hereby, jointly and severally, irrevocably, fully and unconditionally guarantees on a senior secured second-priority basis to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and Notes Collateral Agent and each of their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, to pay fully and promptly, unconditionally, irrevocably, upon first demand and without raising any defenses or objections, set-off or counterclaim and without verification of the legal ground:

(1) any amount in respect of the principal of, premium on, if any, and interest on, the Notes and interest on the overdue principal of, premium on, if any, and interest on, the Notes, if lawful, and any amount in respect of all other obligations of the Issuer to the Holders or the Trustee or the Notes Collateral Agent hereunder or thereunder, all in accordance with the terms hereof and thereof (including, without limitation, interest, fees and expenses accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest, fees and expenses is allowed in such proceeding and the obligations under Section 7.07 hereof); and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same in accordance with the terms of the extension or renewal.

Failing payment when due of any amount so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective and separate of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any

Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives (to the fullest extent permitted by law) diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder, the Trustee or the Notes Collateral Agent is required by any court or otherwise to return to the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid by either to the Trustee, the Notes Collateral Agent or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Notes Collateral Agent, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 10.02 *Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state law, or the laws of the jurisdiction of organization of such Guarantor to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 10.03 *[Reserved].*

Section 10.04 *[Reserved].*

Section 10.05 *Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that this Indenture or a supplemental indenture substantially in the form attached as Exhibit D hereto will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that the Issuer or any of its Restricted Subsidiaries creates or acquires any Restricted Subsidiary after the Issue Date, if required by Section 4.16 hereof, the Issuer will cause such Restricted Subsidiary to comply with the provisions of Section 4.16 hereof and this Article 10, to the extent applicable.

Neither the Issuer nor any Guarantor shall be required to make a notation on the Notes to reflect a Note Guarantee or any release, termination or discharge thereof.

Section 10.06 *Guarantors May Consolidate, etc., on Certain Terms.*

Except as otherwise provided in Article 5 or Section 10.07 hereof, no Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Issuer or another Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) either:

(a) subject to Section 10.07 hereof, the Person (if other than the Guarantor) acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) unconditionally assumes all the obligations of that Guarantor under its Note Guarantee and this Indenture, on the terms set forth therein or herein, pursuant to a supplemental indenture; or

(b) the Net Proceeds of such sale or other disposition are applied, if required, in accordance with the applicable provisions of this Indenture, including without limitation, Section 4.10 hereof.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee (it being understood that such supplemental indenture need not be executed by any other Person besides the Issuer and any such successor Person), of the Note Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. All the Note Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clauses 2(a) and (b) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Issuer or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor.

Section 10.07 *Releases.*

(a) A Note Guarantee of a Guarantor shall be automatically and unconditionally released and discharged without the consent of Holders of Notes and each Subsidiary Guarantor and its obligations under the Notes Guarantee will be released and discharged upon:

(1) the sale, exchange, disposition or other transfer (including through merger, consolidation, amalgamation, Division or dissolution) of (x) the Capital Stock of such Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Restricted Subsidiary of the Issuer, if after such transaction the Guarantor is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of such Subsidiary Guarantor if such sale, exchange, disposition or other transfer (including through merger, consolidation, amalgamation, Division or dissolution) is made in compliance with this Indenture;

(2) the Issuer designating such Subsidiary Guarantor to be an Unrestricted Subsidiary in accordance with the provisions of Section 4.07 hereof and the definition of "Unrestricted Subsidiary;"

(3) in the case of any Restricted Subsidiary that after the Issue Date is required to guarantee the Notes pursuant to Section 4.16 hereof, the release or discharge of the Guarantee by such Subsidiary Guarantor of Indebtedness of the Issuer or any Restricted Subsidiary or the repayment of the Indebtedness or Disqualified Stock, in each case, that resulted in the obligation to guarantee the Notes, except by reason of payment under or the termination or repayment of the ABL Credit Agreement or if a release or discharge is by or as a result of payment in connection with the enforcement of remedies under such other Guarantee;

(4) the Issuer's exercise of its Legal Defeasance option or Covenant Defeasance option pursuant to Article 8 hereof, or if the Issuer's Obligations under this Indenture are discharged (including pursuant to a satisfaction and discharge of this Indenture or through redemption or repurchase of all of the Notes or otherwise) in accordance with the terms of this Indenture;

(5) the release or discharge of the Guarantee by, or direct obligation of, such Subsidiary Guarantor of the Obligations under the ABL Credit Agreement, except by reason of payment under or the termination or repayment of the ABL Credit Agreement or if such release or discharge is by or as a result of payment in connection with the enforcement of remedies under such Guarantee or direct obligation;

(6) such Subsidiary Guarantor becoming an Excluded Subsidiary;

(7) [reserved];

(8) the Note Guarantees are unconditionally released and discharged pursuant to Section 4.19 hereof;

(9) such Guarantor is released pursuant to clause (8) of Section 9.02;

(b) A Note Guarantee of Holdings shall be automatically and unconditionally released and discharged without the consent of Holders of Notes and the obligations of Holdings under the Notes Guarantee will be released and discharged upon:

(1) the Issuer's exercise of its Legal Defeasance option or Covenant Defeasance option pursuant to Article 8 hereof, or if the Issuer's Obligations under this Indenture are discharged (including pursuant to a satisfaction and discharge of this Indenture or through redemption or repurchase of all of the Notes or otherwise) in accordance with the terms of this Indenture;

(2) the release or discharge of the Guarantee by, or direct obligation of, Holdings of the Obligations under the ABL Credit Agreement, except by reason of payment under or the termination or repayment of the ABL Credit Agreement or if such release or discharge is by or as a result of payment in connection with the enforcement of remedies under such Guarantee or direct obligation.

In connection with any release under clause 10.07(a)(1) above, upon delivery by the Issuer to the Trustee of an Officer's Certificate to the effect that all conditions precedent provided for in this Indenture to such release have been complied with, the Trustee will execute any documents reasonably requested by the Issuer in order to evidence the release of any Guarantor from its obligations under its Note Guarantee. The Net Proceeds of such sale or other disposition shall be applied, if required, in accordance with the applicable provisions of this Indenture.

To the extent the Issuer requests evidence of release of a Guarantor under Section 10.07(a)(2) through 10.07(a)(9), 10.07(b)(1) or 10.07(b)(2), the Issuer shall deliver an Officer's Certificate with respect to such release.

Any Guarantor not released from its obligations under its Note Guarantee as provided in this Section 10.07 will remain liable for the full amount of principal of, premium on, if any, and interest on, the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 10.

ARTICLE 11
SATISFACTION AND DISCHARGE

Section 11.01 *Satisfaction and Discharge.*

This Indenture, the Security Documents and the Intercreditor Agreements will be discharged and will cease to be of further effect as to all Notes issued hereunder (except for certain rights of the Trustee and the Notes Collateral Agent, which shall survive), and any Liens on Collateral then securing the Notes shall be automatically released, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, have been cancelled or delivered to the Trustee for cancellation; or

(b) all such Notes not previously delivered to the Trustee for cancellation have become due and payable, will become due and payable at their Stated Maturity within one year or have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of a notice of redemption in the name and at the expense of the Issuer and the Issuer or any Restricted Subsidiary has deposited or caused to be deposited with the Trustee in a manner that is not revocable, (i) cash in U.S. dollars in an amount, (ii) non-callable Government Securities, the scheduled payments of principal of and interest thereon will be in an amount, or (iii) a combination thereof in an amount, as will be sufficient (in the case that Government Securities have been deposited, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants certified in writing to the Trustee), without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on such Notes for principal of, premium on, if any, and interest, if any, on, the Notes to the date of maturity or redemption;

(2) any Issuer or any Restricted Subsidiary has paid or caused to be paid all sums then due and payable by the Issuer and Guarantors under this Indenture; and

(3) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes to maturity or to the redemption date, as the case may be.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 11.01, the provisions of Sections 11.02 and 8.06 hereof will survive. In addition, nothing in this Section 11.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 11.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; *provided* that if the Issuer has made any payment of principal of, premium on, if any, or interest on, any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

The Issuer will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 11.01 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 11 to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable Government Securities held by it as provided in Section 11.01 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect a discharge in accordance with this Article 11.

ARTICLE 12
SECURITY

Section 12.01 *Security Documents; Additional Collateral.*

(a) Security Documents. In order to secure the due and punctual payment of the Obligations under this Indenture, the Notes and the Security Documents, the Issuer, the Guarantors, the Notes Collateral Agent and the other parties thereto, or other parties in accordance with the provisions of Section 4.16, Section 4.22 and this Article 12, will enter into the applicable Security Documents. The Issuer and the Guarantors shall make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) as are required by the Security Documents to maintain (at the sole cost and expense of the Issuer and the Guarantors) the security interests created by the Security Documents in the Collateral (subject to the terms of the Intercreditor Agreements and the Security Documents) as a perfected security interest to the extent perfection is required by the Security Documents and within the time frames set forth therein, subject only to Permitted Liens, and with the priority required by the Intercreditor Agreements, and the other Security Documents. With respect to any Collateral existing as of the Issue Date, to the extent any security interest in favor of the Notes Collateral Agent has not been created or perfected as of the Issue Date, the Issuer and the Guarantors will use their respective commercially reasonable efforts to do or cause to be done all acts and things that would be required to have all security interests in such Collateral duly created and enforceable and perfected, to the extent required by this Indenture or the Security Documents, within 180 days (or such later date as the ABL Collateral Agent may have agreed under the ABL Credit Agreement).

(b) After-Acquired Collateral. Upon the acquisition by any of the Issuer or the Guarantors after the Issue Date of any assets (other than Excluded Assets), the Issuer or such Guarantor shall execute and deliver any information, documentation, financing statements or other certificates as may be necessary to vest in the Notes Collateral Agent a perfected security interest, with the priority required by this Indenture and the Security Documents, subject only to Permitted Liens and certain other exceptions set forth in the Security Agreement, in such after-acquired property and to have such after-acquired property added to the Collateral, and thereupon all provisions of this Indenture and the Security Documents relating to the Collateral shall be deemed to relate to such after-acquired property to the same extent and with the same force and effect.

Section 12.02 *Concerning the Notes Collateral Agent.*

(a) The provisions of this Section 12.02 are solely for the benefit of the Notes Collateral Agent and none of Holdings, the Issuer, any of the other Guarantors nor any of the Holders shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Security Documents, the Notes Collateral Agent shall have only those duties or responsibilities expressly provided hereunder or thereunder and the Notes Collateral Agent shall not have nor be deemed to have any fiduciary relationship with the Trustee, Holdings, the Issuer, any other Guarantor or any Holder, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the Security Documents or otherwise exist against the Notes Collateral Agent.

(b) The Notes Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee with respect to the Security Documents and the Collateral. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreements or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable. After the occurrence of an Event of Default, subject to the provisions of the Security Documents, the Trustee may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture or the Security Documents.

(c) None of the Notes Collateral Agent or any of its respective Affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or under or in connection with any Security Document or the transactions contemplated thereby (except for its own gross negligence or willful misconduct).

(d) Other than in connection with a release of Collateral permitted under Section 12.03 (except as may be required by Section 9.02), in each case that the Notes Collateral Agent may or is required hereunder or under any other Security Document to take any action (an "*Action*"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any other Security Document, the Notes Collateral Agent may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. Subject to the Security Documents, if the Notes Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(e) Beyond the exercise of reasonable care in the custody of the collateral in its possession, the Notes Collateral Agent will have no duty as to any collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Notes Collateral Agent will be deemed to have exercised reasonable care in the custody of the collateral in its possession if the collateral is accorded treatment substantially equal to that which it accords its own property, and the Notes Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Notes Collateral Agent in good faith.

(f) The Notes Collateral Agent will not be responsible for the existence, genuineness or value of any of the collateral or for the validity, perfection, priority or enforceability of the Liens in any of the collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the collateral or any agreement or assignment contained therein, for the validity of the title of any grantor to the collateral, for insuring the collateral or for the payment of taxes, charges, assessments or liens upon the collateral or otherwise as to the maintenance of the collateral. The Notes Collateral Agent hereby disclaims any representation or warranty to the present and future Holders of Notes concerning the perfection of the liens granted hereunder or in the value of any of the collateral.

(g) In the event that the Notes Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Notes Collateral Agent's sole discretion may cause the Notes Collateral Agent, as applicable, to be considered an "owner or operator" under any environmental laws or otherwise cause the Notes Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Notes Collateral Agent reserves the right, instead of taking such action, either to resign as Notes Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Notes Collateral Agent will not be liable to any person for any environmental claims or any environmental liabilities or contribution actions under any federal, state or local law, rule or regulation by reason of the Notes Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(h) The Notes Collateral Agent shall be entitled to all of the protections, immunities, indemnities, rights and privileges of the Trustee set forth in this Indenture and all such protections, immunities, indemnities, rights and privileges shall apply to the Notes Collateral Agent in its roles under any other Security Document or Intercreditor Agreement, whether or not expressly stated therein.

(i) The Notes Collateral Agent shall be entitled to compensation, reimbursement and indemnity as set forth in Section 7.07.

(j) Neither the Trustee nor the Notes Collateral Agent shall have any duty to file any financing statements, amendments thereto, continuation statements or any other agreement or instrument to perfect or maintain the perfection of the Notes Collateral Agent's security interest in the Collateral.

(k) The Notes Collateral Agent may resign or be removed and a successor collateral agent be appointed, all in accordance with the provisions of Section 7.08 and 7.09 hereof, as if references to Trustee therein were references to the Notes Collateral Agent.

(l) If the Issuer or any Guarantor (i) incurs any obligations in respect of Parity Lien Obligations at any time when the Pari Passu Intercreditor Agreement is not in effect or at any time when Parity Lien Obligations entitled to the benefit of the Pari Passu Intercreditor Agreement are concurrently retired, and (ii) delivers to the Notes Collateral Agent an Officer's Certificate so stating and requesting the Notes Collateral Agent to enter into the Pari Passu Intercreditor Agreement in favor of a designated agent or representative for the holders of the Parity Lien Obligations so incurred, the Notes Collateral Agent shall (and is hereby authorized and directed to) enter into the Pari Passu Intercreditor Agreement (at the sole expense and cost of the Issuer, including legal fees and expenses of the Trustee and the Notes Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

Section 12.03 *Releases of Collateral.*

The Liens securing the Notes and the Guarantees will, upon compliance with the conditions precedent to the release of the Collateral together with such documentation, if any, as may be required by this Indenture, automatically and without the need for any further action by any Person be released so long as such release is otherwise in compliance with this Indenture, under any one or more of the following circumstances:

(a) in part, as to any property or assets constituting Collateral, to enable the Issuer or Guarantors to consummate the disposition of such property or assets (to a Person that is not the Issuer or a Guarantor) to the extent permitted under Section 4.10 hereof;

(b) in whole, as to all property subject to such Liens, upon:

(1) payment in full of the principal of, together with accrued and unpaid interest and premium, if any, on, the Notes and all other Obligations under this Indenture, the Note Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest and premium, if any, are paid;

(2) satisfaction and discharge of this Indenture in accordance with Article 11 hereof; or

(3) Legal Defeasance or Covenant Defeasance in accordance with Article 8 hereof;

(c) if such property becomes Excluded Assets;

(d) as to the property and assets of a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Notes Guarantee in accordance with this Indenture;

(e) in part, as to any property or assets constituting Collateral, in accordance with the applicable provisions of the applicable Intercreditor Agreement; and

(f) as to any property or assets, upon the consent of the requisite Holders pursuant to Section 9.02 of this Indenture.

Notwithstanding anything to the contrary herein, the Issuer and the Guarantors will not be required to comply with all or any portion of Section 314(d) of the Trust Indenture Act. If the Issuer requests a formal release, the Issuer shall deliver to the Trustee an

Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture and the Security Documents relating to the execution and delivery of each such release have been complied with.

Section 12.04 *Form and Sufficiency of Release.*

In the event that the Issuer or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that, under the terms of this Indenture may be sold, exchanged or otherwise disposed of by the Issuer or any Guarantor, and the Issuer or such Guarantor requests the Notes Collateral Agent to furnish a written disclaimer, release or quitclaim of any interest in such property under this Indenture, the applicable Note Guarantee and the Security Documents, upon receipt of an Officer's Certificate from the Issuer and Opinion of Counsel certifying that all conditions precedent to such release have been met, the Notes Collateral Agent shall, at the sole cost and expense of the Issuer, execute, acknowledge and deliver to the Issuer or such Guarantor such an instrument in the form provided by the Issuer (to the extent acceptable to the Notes Collateral Agent, acting reasonably), and providing for release without recourse, representation or warranty, promptly after satisfaction of the conditions set forth herein for delivery of such release and shall, at the sole cost and expense of the Issuer take such other action as the Issuer or such Guarantor may reasonably request to effect such release. Notwithstanding the preceding sentence, all purchasers and grantees of any property or rights purporting to be released shall be entitled to rely upon any release executed by the Notes Collateral Agent hereunder as sufficient for the purpose of this Indenture and as constituting a good and valid release of the property therein described from the Lien of this Indenture and the Security Documents.

Section 12.05 *Possession and Use of Collateral.*

Subject to and in accordance with the provisions of this Indenture and the Security Documents, so long as the Trustee (or the Notes Collateral Agent) has not exercised rights or remedies with respect to the Collateral in connection with an Event of Default that has occurred and is continuing, the Issuer and the Guarantors shall have the right to remain in possession and retain exclusive control of and to exercise all rights with respect to the Collateral (other than monies or Cash Equivalents deposited pursuant to Article 8, and other than as set forth in the Security Documents and this Indenture), to operate, manage, develop, lease, use, consume, alter or repair and enjoy the Collateral (other than monies and Cash Equivalents deposited pursuant to Article 8 and other than as set forth in the Security Documents and this Indenture), and to collect, receive, use, invest and dispose of the reversions, remainders, interest, rents, lease payments, issues, profits, revenues, proceeds and other income thereof.

Section 12.06 *Specified Releases of Collateral; Satisfaction and Discharge; Defeasance.*

The Issuer and the Guarantors shall be entitled to obtain a full release of all of the Collateral from the Liens of this Indenture and of the Security Documents securing the Notes upon payment in full of all principal, premium, if any, interest on the Notes and of all Obligations under the Notes, this Indenture and the Security Documents for the payment of money due and owing to the Trustee, the Notes Collateral Agent or the Holders, or upon compliance with the conditions precedent set forth in Article 8 for Legal Defeasance or Covenant Defeasance or Article 11 for Satisfaction and Discharge. Upon delivery by the Issuer to the Trustee and the Notes Collateral Agent of an Officer's Certificate and an Opinion of Counsel, each to the effect that such conditions precedent have been complied with (and which may be the same Officer's Certificate and Opinion of Counsel required by Article 8 or Article 11, as applicable) prior to the release of such Collateral, the Trustee shall forthwith take all action reasonably requested (at the expense of the Issuer) to release from the Liens securing the Notes and reconvey to the Issuer and the applicable Guarantors without recourse, representation or warranty all of the Collateral, and shall deliver such Collateral in its possession to the Issuer and the applicable Guarantors including, without limitation, the execution and delivery of releases and satisfactions wherever required.

Section 12.07 *[Reserved].*

Section 12.08 *Purchaser Protected.*

No purchaser or grantee of any property or rights purporting to be released shall be bound to ascertain the authority of the Trustee or the Notes Collateral Agent to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority.

Section 12.09 *Authorization of Actions to be Taken by the Notes Collateral Agent Under the Security Documents.*

The Issuer, the Guarantors and each Holder of Notes, by their acceptance of any Notes and the Note Guarantees, (a) hereby appoints Wilmington Trust, National Association, as Notes Collateral Agent, and Wilmington Trust, National Association accepts such appointment and (b) agrees that the Notes Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Trustee under Article 7 hereof, including the compensation, reimbursement, and indemnification provisions set forth in Section 7.07 hereof and the resignation and removal provisions of Section 7.08 hereof (with the references to the Trustee therein being deemed to refer to the Notes Collateral Agent). Furthermore, each Holder of a Note, by accepting such Note, consents to and approves the terms of and authorizes and directs the Notes Collateral Agent to (i) enter into and perform the duties provided for in the Intercreditor Agreements and each other Security Document in each of its capacities thereunder and (ii) bind the Holders to the terms of the Intercreditor Agreements.

Section 12.10 *Authorization of Receipt of Funds by the Trustee and the Notes Collateral Agent Under the Security Documents.*

The Trustee and the Notes Collateral Agent are authorized to receive any funds for the benefit of Holders distributed under the Security Documents to the Trustee or the Notes Collateral Agent, to apply such funds as provided in this Indenture and to make further distributions of such funds in accordance with the applicable provisions of Section 6.11 hereof.

Section 12.11 *Powers Exercisable by Receiver or Notes Collateral Agent.*

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 12 upon the Issuer or any Guarantor, as applicable, with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or any Guarantor, as applicable, or of any officer or officers thereof required by the provisions of this Article 12.

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Notices.*

Any notice or communication by the Issuer, any Guarantor, the Trustee or the Notes Collateral Agent to the others or to them by the Holders is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer and/or any Guarantor:

Nesco Holdings, Inc.
7701 Independence Ave.
Kansas City, MO 64125
Facsimile No.: (816) 241-4888
Contact: Brad Meader, Chief Financial Officer

With a copy to (which copy shall be delivered as an accommodation and shall not be required to be delivered in satisfaction of any requirement hereof):

Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
Facsimile No.: (202) 637-2201
Attention: Patrick H. Shannon; Shagufa R. Hossain

If to the Trustee or Notes Collateral Agent:

Wilmington Trust, National Association

50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Nesco Holdings, Inc. Notes Administrator

The Issuer, any Guarantor, the Trustee or Notes Collateral Agent, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile or e-mail; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery, except in the case of notices or communications given to the Trustee or Notes Collateral Agent, which shall be effective only upon actual receipt by the Trustee or Notes Collateral Agent, as the case may be, at its Corporate Trust Office.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notices or communications given to the Trustee or Notes Collateral Agent, which shall be effective only upon actual receipt by the Trustee or Notes Collateral Agent, as the case may be, at its Corporate Trust Office.

If the Issuer mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reasonable reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to DTC (or its designee) pursuant to the standing instructions from DTC or its designee.

Section 13.02 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Issuer or a Guarantor to the Trustee or the Notes Collateral Agent to take any action under this Indenture or the other Note Documents, the Issuer or such Guarantor, as applicable, shall furnish to the Trustee and if such action relates to the Security Documents or Intercreditor Agreements, the Notes Collateral Agent:

(1) an Officer's Certificate in form reasonably satisfactory to the Trustee or Notes Collateral Agent, as applicable, (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form reasonably satisfactory to the Trustee or Notes Collateral Agent, as applicable, (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied;

provided that (x) no Officer's Certificate or Opinion of Counsel will be required to be furnished to the Trustee in connection with the authentication and delivery of the Initial Notes on the Issue Date and (y) no Opinion of Counsel will be required to be furnished to the

Trustee or Notes Collateral Agent in connection with the execution of any amendment or supplement in the form of Exhibit D adding a new Guarantor under this Indenture or evidencing the release of a Guarantor pursuant to Section 10.07 hereof.

Section 13.03 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied;

provided that an issuer of an Opinion of Counsel may rely as to matters of fact on an Officer's Certificate or a certificate of a public official.

Section 13.04 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.05 *No Personal Liability of Directors, Officers, Employees and Equity Holders, including Members.*

No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Notes, this Indenture, the Note Guarantees, the Security Documents, the Intercreditor Agreements or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.06 *Governing Law.*

THE LAWS OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.07 *Consent to Jurisdiction.*

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the City of New York (collectively, the "*Specified Courts*"), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in Section 13.01 hereof shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum. Notwithstanding the foregoing, the Trustee or Notes Collateral Agent may bring an action against the Issuer in any other jurisdiction of its choosing.

Section 13.08 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.09 *Successors.*

All agreements of the Issuer in this Indenture and the Notes will bind its successors. All agreements of the Trustee or Notes Collateral Agent in this Indenture will bind its respective successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 10.07 hereof.

Section 13.10 *Severability.*

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.11 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by facsimile, email or other electronic means shall be effective as delivery of a manually executed counterpart of this Indenture. This Indenture may be in the form of an Electronic Record (as defined below) and may be executed using Electronic Signatures (as defined below) (including, without limitation, facsimile and.pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Section 13.12 *Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 13.13 *Force Majeure.*

In no event shall the Trustee or Notes Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, act or provision of any present or future law or regulation or governmental authority, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee and Notes Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.14 *Waiver of Jury Trial.*

THE ISSUER, THE GUARANTORS (IF ANY) AND THE TRUSTEE, AND EACH HOLDER OF A NOTE BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 13.15 *No Qualification Under the Trust Indenture Act.*

This Indenture is not qualified under the TIA and, accordingly, the TIA shall not apply to or in any way govern the terms of this Indenture.

Section 13.16 *Days Other than Business Days.*

If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on such payment for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

[Signatures on following page]

SIGNATURES

Dated as of April 1, 2021

NESCO HOLDINGS II, INC., as the Issuer

By: /s/ Lee Jacobson
Name: Lee Jacobson
Title: Chief Executive Officer and Director

GUARANTORS:

NESCO FINANCE CORPORATION

By: /s/ Lee Jacobson
Name: Lee Jacobson
Title: Chief Executive Officer and Director

NESCO, LLC

By: /s/ Lee Jacobson
Name: Lee Jacobson
Title: Chief Executive Officer and Director

CAPITOL INVESTMENT MERGER SUB 2, LLC

By: /s/ Lee Jacobson
Name: Lee Jacobson
Title: Chief Executive Officer and Director

[Signature Page to Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee and Notes Collateral Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

[Signature Page to Indenture]

EXHIBIT A

FORM OF 144A AND REGULATION S NOTE

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP: [64083Y AA9] [U64064 AA3]
ISIN: [US64083YAA91] [USU64064AA34]

5.500% Senior Secured Second Lien Note due 2029

No. $_____

NESCO HOLDINGS II, INC.

promises to pay to _____ or registered assigns, the principal sum of _____ DOLLARS [or such other principal sum as shall be set forth in the Schedule of Exchanges of Interests in the Global Note attached hereto][1]

on April 15, 2029.

Interest Payment Dates: April 15 and October 15

Record Dates: April 1 and October 1

Dated: _____

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1 Insert in Global Notes only.

NESCO HOLDINGS II, INC.

By: _____
Name:
Title:

This is one of the Notes referred to in the
within-mentioned Indenture:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated:

Back of Note
5.500% Senior Secured Second Lien Note due 2029

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST.* NESCO HOLDINGS II, INC., a corporation organized under the laws of Delaware (the "*Issuer*"), or its respective successors, promises to pay or cause to be paid interest on the principal amount of this Note at the rate of 5.500% per annum from April 1, 2021 until maturity. The Issuer will pay interest semi-annually in arrears on April 15 and October 15 of each year commencing October 15, 2021 (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day to the Holders of record as of the close of business on the immediately preceding April 1 and October 1 (whether or not a Business Day). Interest on the Notes will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the date of original issuance of the Notes.

Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(2) *METHOD OF PAYMENT.* The Issuer will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on April 1 and October 1 (whether or not a Business Day) immediately preceding the Interest Payment Date, even if such Notes are cancelled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest (and defaulted interest, if any), if any, at the office or agency of the Paying Agent and Registrar within the contiguous United States, or, at the option of the Issuer, payment of interest, if any, due on an Interest Payment Date may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of, premium, if any, on, and interest, if any, on, all Global Notes and, with respect to interest due on an Interest Payment Date, all other Notes the Holders of which will have provided wire transfer instructions to the Paying Agent at least fifteen (15) Business Days prior to the Interest Payment Date. Such payments will be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *PAYING AGENT AND REGISTRAR.* Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuer may change the Paying Agent or Registrar without prior notice to the Holders of the Notes. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

(4) *INDENTURE.* The Issuer issued the Notes under an Indenture dated as of April 1, 2021 (the "*Indenture*") among the Issuer, the Guarantors party thereto from time to time, the Trustee and the Notes Collateral Agent. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and

be controlling. The Notes are secured obligations of the Issuer. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

(5) *OPTIONAL REDEMPTION*.

(a) At any time prior to April 15, 2024, the Issuer may on any one or more occasions redeem up to 40% of the aggregate principal amount of Notes (calculated after giving effect to the issuance of any Additional Notes) issued under the Indenture at a redemption price equal to 105.500% of the principal amount of Notes redeemed, *plus* accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption (subject to the right of Holders of Notes on a relevant record date to receive interest on an Interest Payment Date occurring on or prior to the redemption date), with the cash proceeds of any Equity Offering; *provided* that:

(1) at least the lesser of (a) 50% of the aggregate principal amount of the Notes (including any Additional Notes) then outstanding or (b) $100.0 million aggregate principal amount of the Notes (including any Additional Notes) remains outstanding immediately after the occurrence of each such redemption (except to the extent otherwise repurchased or redeemed in accordance with the terms of the Indenture); and

(2) the redemption occurs within 180 days of the date of the closing of such Equity Offering.

(b) At any time prior to April 15, 2024, the Issuer may on any one or more occasions redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount of the Notes redeemed, plus the Applicable Premium as of the date of the redemption notice, and accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption, subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the redemption date.

(c) At any time, in connection with any offer to purchase the Notes (including pursuant to a Change of Control Offer, Alternate Offer or Asset Sale Offer), if Holders of at least 90% in aggregate principal amount of the Notes outstanding tender such Notes in such offer, the Issuer or such other Person, upon notice given not more than 60 days following such purchase pursuant to such offer, may redeem all of the remaining Notes of such series at a price in cash equal to the price offered to each Holder in such prior offer, *plus*, to the extent not included in the prior offer payment, accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the date of redemption, subject to the rights of Holders of Notes on a relevant record date to receive interest due on an Interest Payment Date occurring on or prior to the redemption date. In determining whether the Holders of at least 90% in aggregate principal amount of the outstanding Notes have validly tendered and not validly withdrawn Notes in an offer, Notes owned by an Affiliate of the Issuer or by funds controlled or managed by an Affiliate of the Issuer, or any successor thereof, shall be deemed to be outstanding for the purposes of such offer.

(d) Prior to April 15, 2024, the Issuer may redeem during each calendar year commencing with the calendar year in which the Issue Date occurs up to 10% of the aggregate principal amount of the Notes, including any Additional Notes, at its option, from time to time at a redemption price equal to 103% of the aggregate principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the redemption date); *provided* that in any given calendar year, any amount not utilized pursuant to this paragraph in any calendar year may be carried forward to subsequent calendar years.

(e) Except pursuant to the preceding paragraphs, the Notes will not be redeemable at the Issuer's option prior to April 15, 2024.

(f) On or after April 15, 2024, the Issuer may on any one or more occasions redeem all or a portion of the Notes at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the applicable date of redemption, if redeemed during the 12-month period beginning on April 15 of the years indicated below, subject to the rights of Holders of Notes on a relevant record date to receive interest on an Interest Payment Date occurring on or prior to the redemption date:

Year	**Percentage**
2024	102.750%

2025	101.375%
2026 and thereafter	100.000%

(g) In connection with any redemption of Notes (including with net cash proceeds of an Equity Offering), any such redemption may, at the Issuer's discretion, be performed by another Person and/or be subject to one or more conditions precedent. In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or such redemption may not occur and such notice may be modified or rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed (which may exceed 60 days from the date of the redemption notice in such case). Such notice of redemption may be extended if such conditions precedent have not been met, by providing notice to the Holders of Notes. Notes called for redemption become due on the applicable redemption date (as such date may be extended or delayed).

Unless the Issuer defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date (whether or not a Business Day).

(6) *MANDATORY REDEMPTION.* The Issuer is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER*.

(a) If a Change of Control occurs, the Issuer may be required to offer to repurchase the Notes as required by the Indenture.

(b) Following the occurrence of certain Asset Sales, the Issuer may be required to offer to repurchase a certain amount of the Notes as required by the Indenture.

(8) *NOTICE OF REDEMPTION.* Notices for redemption shall be as set forth in Section 3.03 of the Indenture.

(9) *DENOMINATIONS*, *TRANSFER*, *EXCHANGE.* The Notes are in registered form in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents in connection with a transfer of Notes. Holders will be required to pay all taxes due on transfer. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuer need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

(10) *PERSONS DEEMED OWNERS.* The registered Holder of a Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture.

(11) *AMENDMENT*, *SUPPLEMENT AND WAIVER.* Subject to certain exceptions, the Indenture, the Notes or any Note Guarantee may be amended, supplemented or waived in accordance with Article 9 of the Indenture.

(12) *DEFAULTS AND REMEDIES.* The Notes are subject to the Defaults and Events of Default set forth in Article 6 of the Indenture. The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, upon becoming aware of any Default or Event of Default (unless such Default or Event of Default has been cured or waived), to deliver to the Trustee a statement specifying such Default or Event of Default as further provided in Section 4.04 of the Indenture.

(13) *TRUSTEE DEALINGS WITH ISSUER.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Issuer or its Affiliates, and may otherwise deal with the Issuer or its Affiliates, as if it were not the Trustee.

(14) *NO RECOURSE AGAINST OTHERS.* No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, Holdings, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Indenture, the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

(15) *AUTHENTICATION.* This Note will not be valid until authenticated by the manual signature of an authorized signatory of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *CUSIP NUMBERS.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the Notes, and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW.* THE LAWS OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Nesco Holdings, Inc.
7701 Independence Ave.
Kansas City, MO 64125
Facsimile No.: (816) 241-4888
Contact: Brad Meader, Chief Financial Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

_____
(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ attorney to transfer this Note on the books of the Issuer. The attorney may substitute another to act for him.

Date: _____

Your Signature: _____

_____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.10 or Section 4.14 of the Indenture, check the appropriate box below:

☐ Section 4.10 ☐ Section 4.14

If you want to elect to have only part of the Note purchased by the Issuer pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____ ($2,000 or an integral multiple of $1,000 in excess thereof, *provided* that the unpurchased portion of the Note shall be in a minimum principal amount of $2,000.)

Date: _____

Your Signature: _____

_____

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE[1]

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange/Transfer	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized signatory of Trustee or Custodian

[1] This schedule should be included only if the Note is issued in global form.

EXHIBIT B

[FORM OF CERTIFICATE OF TRANSFER]

Nesco Holdings, Inc.
6714 Pointe Inverness Way, Suite 220
Fort Wayne, Indiana 46804
Attention: Legal Department

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Nesco Holdings, Inc. Notes Administrator

Re: 5.500% Senior Secured Second Lien Notes due 2029

Reference is hereby made to the Indenture, dated as of April 1, 2021 (the "*Indenture*"), among NESCO Holdings II, Inc., a corporation organized under the laws of the state of Delaware (the "*Issuer*"), the Guarantors party thereto from time to time and Wilmington Trust, National Association, as Trustee and Notes Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Transferor*") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "*Transfer*"), to _____ (the "*Transferee*"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. ☐ **Check if Transferee will take delivery of a beneficial interest in the Regulation S Temporary Global Note, the Regulation S Permanent Global Note or a Restricted Definitive Note pursuant to Regulation S**. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Permanent Global Note, the Regulation S Temporary Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S**. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Issuer or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. ☐ **Check if Transferee will take delivery of an Unrestricted Definitive Note**.

(a) ☐ **Check if Transfer is pursuant to Rule 144**. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ **Check if Transfer is Pursuant to Regulation S**. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ **Check if Transfer is Pursuant to Other Exemption**. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain

compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(b) ☐ a Restricted Definitive Note;

(c) ☐ an Unrestricted Definitive Note;

in accordance with the terms of the Indenture.

EXHIBIT C

[FORM OF CERTIFICATE OF EXCHANGE]

Nesco Holdings, Inc.
6714 Pointe Inverness Way, Suite 220
Fort Wayne, Indiana 46804
Attention: Legal Department

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Nesco Holdings, Inc. Notes Administrator

Re: 5.500% Senior Secured Second Lien Notes due 2029

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of April 1, 2021 (the "*Indenture*"), among Nesco Holdings, Inc., a corporation organized under the laws of the state of Delaware (the "*Issuer*"), the Guarantors party thereto from time to time and Wilmington Trust, National Association, as Trustee and Notes Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "*Owner*") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "*Exchange*"). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**.

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note**. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note, ☐ Regulation S Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes**.

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) ☐ **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note**. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT D

☐ SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, between _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of NESCO Holdings II, Inc., a corporation organized under the laws of the state of Delaware (the "*Issuer*"), and Wilmington Trust, National Association, as trustee (in such capacity, the "Trustee") and collateral agent (in such capacity, the "*Notes Collateral Agent*") under the Indenture referred to below.

WITNESSETH

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee and Notes Collateral Agent an indenture (as it may be amended, restated, supplemented or otherwise modified from time to time, the "*Indenture*"), dated as of April 1, 2021, providing for the issuance of 5.500% Senior Secured Second Lien Notes due 2029 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "*Note Guarantee*");

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture without the consent of Holders of the Notes; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. GUARANTEE.

(a) Each Guaranteeing Subsidiary hereby becomes a party to the Indenture as a Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture, effective upon the execution and delivery of this Supplemental Indenture.

(b) The Guaranteeing Subsidiary hereby provides an unconditional Guarantee on the terms and subject to the conditions set forth in the Note Guarantee and in the Indenture including but not limited to Article 10 thereof.

[To include any local law limitations of the jurisdiction of organization of such Guaranteeing Subsidiary if not already included in the Indenture]

3. NO RECOURSE AGAINST OTHERS. No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Indenture, the Note Guarantees, the Security Documents, the Intercreditor Agreements or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

4. NEW YORK LAW TO GOVERN. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by facsimile, email or other electronic means shall be effective as delivery of a manually executed counterpart of this Supplemental Indenture. This Supplemental Indenture may be in the form of an Electronic Record (as defined below) and may be executed using Electronic Signatures (as defined below) (including, without limitation, facsimile and.pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE AND NOTES COLLATERAL AGENT. Neither the Trustee nor the Notes Collateral Agent shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals and statements contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary, and the Trustee and Notes Collateral Agent assume no responsibility for their correctness.

8. BENEFITS ACKNOWLEDGED. The Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions in the Indenture. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing

arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

9. SUCCESSORS. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its successors, except as otherwise provided in the Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

10. RATIFICATION OF INDENTURE; SUPPLEMENTAL INDENTURE PART OF INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee and as Notes Collateral Agent

By: _____
Name:
Title:

EXHIBIT E

[FORM OF CERTIFICATE OF BENEFICIAL OWNERSHIP]

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Nesco Holdings, Inc. Notes Administrator

Re: $920,000,000 aggregate principal amount of 5.500% Senior Secured Second Lien Notes due 2029 (the "*Notes*") of NESCO Holdings II, Inc., a corporation organized under the laws of the state of Delaware (the "*Issuer*")

Ladies and Gentlemen:

This is to certify that based solely on certifications we have received in writing, by tested telex or by electronic transmission from institutions appearing in our records as persons being entitled to a portion of the principal amount of Notes represented by a Regulation S Temporary Global Note issued under the Indenture, dated as of April 1, 2021, between the Issuer, the guarantors party thereto from time to time, and Wilmington Trust, National Association, as trustee and collateral agent, as supplemented, that as of the date hereof, $_____ principal amount of Notes represented by the Regulation S Temporary Global Note being submitted herewith for exchange is beneficially owned by persons that are either (i) non-U.S. persons (within the meaning of Regulation S under the Securities Act of 1933, as amended) or (ii) U.S. persons that purchased the Notes in a transaction that did not require registration under the Securities Act of 1933, as amended.

We further certify that (i) we are not submitting herewith for exchange any portion of such Regulation S Temporary Global Note excepted in such certifications and (ii) as of the date hereof we have not received any notification from any institution to the effect that the statements made by such institution with respect to any portion of such Regulation S Temporary Global Note submitted herewith for exchange are no longer true and cannot be relied upon as of the date hereof.

You and the Issuer are entitled to rely upon this certificate and are irrevocably authorized to produce this certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Yours faithfully,

[Name of DTC Participant]

By: _____
Name:
Title:
Address:

Date: _____

EXHIBIT F

[FORM OF PARI PASSU INTERCREDITOR AGREEMENT]

[see attached]

Exhibit 10.3

REVOLVING CREDIT AGREEMENT

among

CAPITOL INVESTMENT MERGER SUB 2, LLC,
as HOLDINGS,

NESCO HOLDINGS II, INC.,
as BORROWER,
VARIOUS LENDERS AND ISSUING BANKS
and

BANK OF AMERICA, N.A.,
as Administrative Agent, Collateral Agent and Swingline Lender

Dated as of April 1, 2021

BOFA SECURITIES, INC.,
PNC CAPITAL MARKETS LLC,
WELLS FARGO BANK, N.A.,
CITIBANK, N.A.,
DEUTSCHE BANK SECURITIES INC.,
BMO CAPITAL MARKETS CORP.,
FIFTH THIRD BANK, NATIONAL ASSOCIATION,
MORGAN STANLEY SENIOR FUNDING, INC.,
MUFG UNION BANK, N.A.,
RBC CAPITAL MARKETS, LLC,
CIBC BANK USA,
and
STIFEL NICOLAUS AND COMPANY, INCORPORATED,
as Joint Lead Arrangers and Bookrunners

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THIS REVOLVING CREDIT AGREEMENT, dated as of April 1, 2021, among CAPITOL INVESTMENT MERGER SUB 2, LLC, a Delaware limited liability company ("Holdings"), NESCO HOLDINGS II, INC., a Delaware corporation (the "Borrower"), the Lenders party hereto from time to time and BANK OF AMERICA, N.A. ("Bank of America"), as the Administrative Agent and the Collateral Agent. All capitalized terms used herein and defined in Article 1 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, pursuant to the Acquisition Agreement, the Borrower will acquire, directly or indirectly, all or substantially all of the outstanding equity interests of Utility One Source GP LLC, a Delaware limited liability company ("UOS GP"), Custom Truck One Source, L.P., a Delaware limited partnership (the "Company" and together with its subsidiaries, collectively, the "Target"), Blackstone UOS Feeder Fund BEP L.P., a Delaware limited partnership (the "BEP Blocker"), and Blackstone UOS Feeder Fund VI L.P., a Delaware limited partnership (the "VI Blocker," and together with BEP Blocker, the "Blocker Companies") (such acquisition, the "Acquisition").

WHEREAS, (a) the Borrower has requested that the Lenders extend credit in the form of Revolving Loans in an aggregate principal amount at any time outstanding not to exceed $750,000,000 (or such higher amount as permitted hereunder), (b) the Borrower has requested that the Issuing Banks issue Letters of Credit in an aggregate stated amount at any time outstanding not to exceed $50,000,000 and (c) the Swingline Lender extend credit in the form of Swingline Loans in an aggregate principal amount at any time outstanding not to exceed $75,000,000.

NOW THEREFORE, the Lenders are willing to extend such credit to the Borrower, the Issuing Banks are willing to issue Letters of Credit for the account of the Borrower and the Swingline Lender is willing to make Swingline Loans to the Borrower or any Restricted Subsidiary on the terms and subject to the conditions set forth herein.

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

ARTICLE 1 Definitions and Accounting Terms.

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

"Account Debtor" shall mean any Person who may become obligated to another Person under, with respect to, or on account of, an Account.

"Accounts" shall mean all "accounts," as such term is defined in the UCC as in effect on the date hereof in the State of New York or, as applicable, in the PPSA, in which any Person now or hereafter has rights and shall include all rights to payment for goods sold or leased, or for services rendered.

"Acquired Companies" shall mean, collectively, UOS GP, the Target and the Blocker Companies.

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

"Acquired Rental Asset" shall have the meaning provided in the definition of "Acquired Rental Asset EBITDA."

"Acquired Rental Asset EBITDA" shall mean pro forma "run rate" Consolidated EBITDA (determined, for the avoidance of doubt, without giving effect to clause (xiv) of such definition and as if references to the Borrower and its Restricted Subsidiaries in the definition of Consolidated EBITDA were references to such Acquired Rental Asset (as defined below)) under customer contracts in respect of any assets of the Borrower and its Restricted Subsidiaries added to the Rental Equipment (the "Acquired Rental Asset") during the applicable period calculated on a Pro Forma Basis as though such amount had been realized on the first day of such period for which Consolidated EBITDA is being determined and as if such amount was realized during the entirety of such period (determined in good faith by the Borrower in a manner consistent with past practice).

"Acquisition" shall have the meaning provided in the recitals hereto.

"Acquisition Agreement" shall mean that certain Purchase and Sale Agreement (including the schedules, exhibits and disclosure schedules thereto), dated as of December 3, 2020 and as amended by the First Amendment to Purchase and Sale Agreement, dated as of March 31, 2021, by and among the Borrower, Nesco Holdings, Inc., the CTOS Sellers (as defined therein), the BlockerCo Sellers (as defined therein), Sellers' Representative (as defined therein) and the Investor (as defined therein).

"Acquisition Agreement Representations" shall mean the representations made by or with respect to the Acquired Companies in the Acquisition Agreement as are material to the interests of the Agents and their Affiliates that are Lenders on the Closing Date, but only to the extent that the Borrower or its Affiliates have the right (taking into account any applicable cure periods) to terminate their obligations (or refuse to consummate the Acquisition) under the Acquisition Agreement or not to close thereunder as a result of the failure of such representations to be true and correct.

"Additional Equity Investment" shall mean the issuance by Holdings, on or prior to the Closing Date, of shares of common stock yielding $100,000,000 in gross cash proceeds to Holdings (which shall be further contributed to Holdings in the form of cash common equity).

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

"Additional Platinum Equity Financing" shall have the meaning provided in Section 6.06.

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

"Adjustment Date" shall mean the first day of January, April, July and October of each fiscal year.

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

"Administrative Agent Fees" shall have the meaning provided in Section 2.05(b).

"Administrative Questionnaire" shall mean an administrative questionnaire in the form supplied by the Administrative Agent.

"Advisory Agreement" shall mean that certain Corporate Advisory Services Agreement by and among the Borrower (and/or one of its direct or indirect parent companies) and one or more of the Sponsors, as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time.

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

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

"Agent Parties" shall have the meaning provided in Section 13.03(d).

"Agents" shall mean the Administrative Agent, the Collateral Agent, any sub-agent or co-agent of either of the foregoing pursuant to the Credit Documents and the Lead Arrangers.

"Aggregate Commitments" shall mean, at any time, the aggregate amount of the Revolving Commitments of all Lenders.

"Aggregate Exposures" shall mean, at any time, the sum of (a) the aggregate Outstanding Amount of all Loans *plus* (b) the LC Exposure, each determined at such time.

"Agreement" shall mean this Revolving Credit Agreement, as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time.

"Alternative Currency" shall mean Canadian Dollars and each other currency (other than Dollars) that is approved in accordance with Section 1.04.

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption including the United States Foreign Corrupt Practices Act of 1977, as amended, and the *Corruption of Foreign Public Officials Act* (Canada), as amended.

"Applicable Margin" shall mean with respect to any Type of Revolving Loan, the *per annum* margin set forth below, as determined by the Average Availability as of the most recent Adjustment Date:

Level	Average Availability (percentage of Line Cap)	Base Rate Loans	LIBO Rate Loans and CDOR Rate Loans

I	≥ 66%	0.50%	1.50%
II	≥ 33% but < 66%	0.75%	1.75%
III	< 33%	1.00%	2.00%

Until the first Adjustment Date occurring after June 30, 2021, the Applicable Margin shall be determined as if Level II were applicable. Thereafter, the Applicable Margin shall be subject to increase or decrease on each Adjustment Date based on Average Availability during the immediately preceding fiscal quarter. If the Borrower fails to deliver any Borrowing Base Certificate on or before the date required for delivery thereof, then, at the option of the Required Lenders upon written notice from the Administrative Agent to the Borrower, the Applicable Margin shall be determined as if Level III were applicable, from the first day of the calendar month following the date such Borrowing Base Certificate was required to be delivered until the date of delivery of such Borrowing Base Certificate.

"Applicable Time" shall mean, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment and, in the case of borrowing requests and payments by the Borrower, notified in writing to the Borrower. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account of the Administrative Agent by no later than 3:00 p.m. New York City time.

"Appraisal" shall mean an appraisal, prepared on a basis reasonably satisfactory to the Administrative Agent, setting forth the Net Orderly Liquidation Value of any Inventory, which appraisal shall be prepared in accordance with Section 9.02.

"Approved Fund" shall mean any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) an existing Lender, (b) an Affiliate or branch of an existing Lender or (c) an entity or an Affiliate of an entity that administers or manages an existing Lender.

"Assignment and Assumption" shall mean an Assignment and Assumption substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent and the Borrower (such approval by the Borrower not to be unreasonably withheld, delayed or conditioned).

"Audited Borrower Financial Statements" shall have the meaning provided in Section 6.11.

"Audited Target Financial Statements" shall have the meaning provided in Section 6.11.

"Availability" shall mean, as of any applicable date, the amount by which the Line Cap at such time exceeds the Aggregate Exposures on such date.

"Availability Conditions" shall be deemed satisfied only if:

(a) each Lender's Revolving Exposure does not exceed such Lender's Revolving Commitment;

(b) prior to the Closing Date Borrowing Base Termination Date, the Aggregate Exposure of all Lenders does not exceed the Closing Date Borrowing Base; and

(c) after the Closing Date Borrowing Base Termination Date, the Aggregate Exposure of all Lenders does not exceed the Line Cap.

"Average Availability" shall mean at any Adjustment Date, the average daily Availability for the fiscal quarter immediately preceding such Adjustment Date.

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

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

"Bank of America" shall have the meaning provided in the preamble hereto.

"Bank Product" shall mean any of the following products, services or facilities extended to the Borrower or any of its Subsidiaries: (a) Cash Management Services; (b) products under Swap Contracts; (c) commercial credit card, purchase card and merchant card services; and (d) other banking products or services as may be requested by the Borrower or any of its Subsidiaries, other than Letters of Credit issued pursuant to the provisions of Section 2.13 by the Administrative Agent or any Issuing Bank.

"Bank Product Debt" shall mean Indebtedness and other obligations of the Borrower or any of its Restricted Subsidiaries relating to Bank Products.

"Bank Product Reserve" shall mean the aggregate amount of reserves established by the Administrative Agent from time to time in its Permitted Discretion in respect of Secured Bank Product Obligations (which shall at all times include a reserve for the maximum amount of all Noticed Hedges outstanding at that time).

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

"Base Rate" shall mean, for any day, a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate in effect on such day (which, if negative, shall be deemed to be 0.00%) *plus* ½ of 1%, (b) the Prime Rate in effect on such day and (c) the LIBO Rate for a LIBO Rate Loan with a one month Interest Period commencing on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%. Notwithstanding any of the foregoing, the Base Rate shall not at any time be less than 1.00% *per annum*.

"Base Rate Loan" shall mean each Revolving Loan which is designated or deemed designated as a Revolving Loan bearing interest at the Base Rate by the Borrower at the time of the incurrence thereof or conversion thereto. All Base Rate Loans shall be denominated in Dollars.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

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

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

"BEP Blocker" shall have the meaning provided in the recitals hereto.

"BHC Act Affiliate" shall have the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"Blocker Companies" shall have the meaning provided in the recitals hereto.

"Book Value" shall mean book value as determined in accordance with U.S. GAAP.

"Borrower" shall have the meaning provided in the preamble hereto.

"Borrower Materials" shall have the meaning provided in Section 9.01.

"Borrowing" shall mean the borrowing of the same Type and in the same currency of Revolving Loan by the Borrower from all the Lenders having Commitments on a given date (or resulting from a conversion or conversions on such date), having, in the case of LIBO Rate Loans and CDOR Rate Loans, the same Interest Period.

"Borrowing Base" shall mean, at any time of calculation, an amount equal to the sum of, without duplication:

(a) 90% of the Book Value of Eligible Accounts of the Credit Parties (other than any Specified Floor Plan Company); *plus*

(b) the lesser of (i) 75% of the Book Value of Eligible Parts Inventory of the Credit Parties (other than any Specified Floor Plan Company) and (ii) 90% of the Net Orderly Liquidation Value of the Eligible Parts Inventory of the Credit Parties (other than any Specified Floor Plan Company); *plus*

(c) the sum of (i) 95% of the Net Book Value of the Eligible Fleet Inventory of the Credit Parties (other than any Specified Floor Plan Company) that has not been appraised by an Appraisal and (ii) 85% of the Net Orderly Liquidation Value of the Eligible Fleet Inventory of the Credit Parties (other than any Specified Floor Plan Company) that has been appraised by an Appraisal; *plus*

(d) 100% of Eligible Cash of the Credit Parties (other than any Specified Floor Plan Company) (*provided*, that the amount added pursuant to this clause (d) shall not exceed 10% of the Revolving Commitments at such time); *minus*

(e) any Reserves established from time to time by the Administrative Agent in accordance herewith.

Notwithstanding the foregoing or anything to the contrary in this Agreement, the Borrowing Base shall be deemed to be $600,000,000 (the "Closing Date Borrowing Base") until the Closing Date Borrowing Base Termination Date, regardless of the actual computation of the Borrowing Base; *provided*, that if the Borrower has not delivered the Initial Field Exam and Appraisal and a Borrowing Base Certificate on or prior to the Closing Date Borrowing Base Termination Date, then until the date of such delivery, the Closing Date Borrowing Base shall be deemed to be $0 until the date of such delivery; *provided*, *further*, that so long as the Borrower is using commercially reasonable efforts to cooperate with the Administrative Agent and the Examiner in the preparation of the Initial Field Exam and Appraisal, then from the Closing Date Borrowing Base Termination Date until the time which such Initial Field Exam and Appraisal have been completed in full, the Closing Date Borrowing Base shall be deemed to be the sum of (a) the actual amount of the Borrowing Base with respect to the portion of the Borrowing Base assets for which an Initial Field Exam and Appraisal has been completed, *less* applicable Reserves, *plus* (b) solely during the period from the Closing Date Borrowing Base Termination Date until the date that is 180 days after the Closing Date, 40% of the amount of Eligible Accounts of the Credit Parties (other than any Specified Floor Plan Company) and 60% of the Net Book Value of Eligible Fleet Inventory of the Credit Parties (other than any Specified Floor Plan Company), *less* applicable Reserves (which such amount in this clause (b) shall not be less than $0); *provided*, *further*, that if such delivery does not occur on or prior to the date that is 180 days after the Closing Date, the amounts included pursuant to this clause (b) shall be deemed to be $0 until such delivery.

"Borrowing Base Certificate" shall mean a certificate of a Responsible Officer of the Borrower in form and substance reasonably satisfactory to the Administrative Agent.

"Business Activity Report" shall mean (a) a Notice of Business Activities Report from the State of Minnesota, Department of Revenue or (b) any similar report required by any other State relating to the ability of the Borrower to enforce its accounts receivable claims against account debtors located in any such state.

"Business Day" shall mean any day except Saturday, Sunday and any day which shall be in New York City or the state where the Administrative Agent's office is located a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in New York City, and (i) if such date relates to (x) any Loans denominated in Canadian Dollars or (y) payment or purchase of Canadian Dollars, any day except Saturday, Sunday and any day which shall be in Toronto, Ontario a legal holiday or a day in which banking institutions are authorized or required by law or other government action to close in Toronto and

(ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBO Rate Loans, any day which is a Business Day which is also a day for trading by and between banks in the New York or London interbank market or the principal financial center of such Alternative Currency.

"Canadian Collateral" shall mean all property (whether real, personal or otherwise) with respect to which any security interests, hypothecs or Liens have been granted (or purported to be granted) by any Canadian Credit Party pursuant to any Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.13, including, without limitation, collateral as described in the Canadian Security Agreement. For the avoidance of doubt, in no event shall Canadian Collateral include Excluded Collateral or any interests in Real Property.

"Canadian Credit Party" shall mean each Canadian Subsidiary that is or becomes a Subsidiary Guarantor.

"Canadian Defined Benefit Pension Plan" shall mean any Canadian Pension Plan which contains a "defined benefit provision," as defined in subsection 147.1(1) of the Income Tax Act (Canada).

"Canadian Dollars" and "C$" shall mean the lawful currency of Canada.

"Canadian Dominion Account" shall mean a special concentration account established by the Canadian Credit Parties in Canada, at a bank reasonably acceptable to the Administrative Agent, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Credit Documents.

"Canadian Economic Sanctions and Export Control Laws" shall mean any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures.

"Canadian Pension Event" shall mean solely with respect to a Canadian Defined Benefit Pension Plan (a) the termination by a Credit Party of such a Canadian Defined Benefit Pension Plan; or (b) the filing of a notice of intention to terminate in whole or in part such a Canadian Defined Benefit Pension Plan or the treatment of such a Canadian Defined Benefit Pension Plan amendment as a termination or partial termination; or (c) the issuance of an order or notice of intended decision by any Governmental Authority to terminate or have an administrator or like body appointed to administer such a Canadian Defined Benefit Pension Plan; or (d) any other event or condition which would reasonably be expected to constitute grounds for the termination of, winding up or partial termination or winding up or the appointment of an administrator or trustee to administer, any such Canadian Defined Benefit Pension Plan.

"Canadian Pension Plan" shall mean any "registered pension plan" as such term is defined under the *Income Tax Act* (Canada) that is administered or contributed to by any Credit Party in respect of its Canadian employees or former employees.

"Canadian Priority Payables Reserve" shall mean, on any date of determination and only with respect to a Canadian Credit Party, reserves established by the Administrative Agent in its Permitted Discretion which reflect amounts secured by any Liens, choate or inchoate, which rank or are capable of ranking in priority to or *pari passu* with the Collateral Agent's Liens on the Canadian Collateral, including, without limitation or duplication, any such amounts due and not paid for wages or vacation pay (including amounts protected by section 81.3 of the *Bankruptcy and Insolvency Act* (Canada)), amounts due and not paid under any legislation relating to workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the *Income Tax Act* (Canada), sales tax, goods and service tax, value added tax, harmonized tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) or similar applicable provincial legislation, all amounts currently or past due and not contributed, remitted or paid to any Canadian Pension Plan (including amounts due and not contributed, remitted or paid upon a wind up of a Canadian Pension Plan on account of a wind up or solvency deficiency) or under the Canada Pension Plan or the Quebec Pension Plan, which, in each case referred to above in this definition are secured by Liens, which rank or are capable of ranking in priority to or *pari passu* with the Collateral Agent's Liens on the Canadian Collateral.

"Canadian Security Agreement" shall mean the Canadian Security Agreement executed by each Canadian Credit Party as of the date of this Agreement creating security interests over certain assets of such Canadian Credit Party.

"Canadian Security Documents" shall mean the Canadian Security Agreement, each Deposit Account Control Agreement of a Canadian Credit Party, and, after the execution and delivery thereof, each Additional Security Document of a Canadian Credit Party.

"Canadian Subsidiary" shall mean any Subsidiary of the Borrower that is incorporated, formed or otherwise organized under the laws of Canada or any province or territory thereof.

"Canadian Sweep" shall have the meaning provided in Section 9.17(d).

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

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

"Cash Collateralize" shall mean (a) to pledge and deposit with or deliver to the Administrative Agent for deposit into the LC Collateral Account, for the benefit of the Administrative Agent, the Issuing Banks or the Swingline Lender (as applicable) and the Lenders, cash as collateral for, or (b) to provide other credit support (including in the form of backstop letters of credit), in form and containing terms (including, to the extent not specifically set forth in this Agreement, the amount thereof) reasonably satisfactory to the Administrative Agent or the Issuing Banks, as applicable, for, in either case, the LC Exposure, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect thereof (as the context may require). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and such other credit support.

"Cash Equity Financing" shall have the meaning provided in Section 6.06.

"Cash Equivalents" shall mean:

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

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

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

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

(v) certificates of deposit and eurodollar time deposits with maturities of twenty-four months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twenty-four months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's;

(vi) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within twenty-four months after the date of acquisition;

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition; and

(ix) Indebtedness or preferred stock issued by Person having a credit rating of at least A-2 (or the equivalent grade) by Moody's or A by S&P, maturing within twenty-four months after the date of acquisition.

"Cash Management Services" shall mean any services provided from time to time to the Borrower or any of its Subsidiaries in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"CDOR Rate" shall mean, for the relevant Interest Period, the rate of interest *per annum* equal to the Canadian Dollar bankers' acceptance rate determined by the Administrative Agent, determined by it at or about 10:00 a.m. (Toronto time) on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day) for a term comparable to the CDOR Rate Loan, as published on the CDOR or other applicable Reuters screen page (or, if not available, such other commercially available source designated by the Administrative Agent in a manner consistent with market practice from time to time; *provided* that to the extent such market practice is not administratively feasible by the Administrative Agent, such designated rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent); *provided*, *further*, that in no event shall the CDOR Rate be less than zero.

"CDOR Rate Loan" shall mean a Loan denominated in Canadian Dollars made by the Lenders to the Borrower which bears interest at a rate based on the CDOR Rate.

"Certificated Rental Equipment" shall mean Rental Equipment subject to certificates of title.

"CFC" shall mean a "controlled foreign corporation" within the meaning of Section 957 of the Code.

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

"Change of Control" shall be deemed to occur if:

(a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date, but excluding any employee benefit plan and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Permitted Holders, acquires beneficial ownership of voting stock of the Borrower representing more than 50% of the aggregate ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis);

(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person other than one or more Permitted Holders;

(c) the Borrower ceases to be a direct or indirect Wholly-Owned Subsidiary of Holdings or, following a consolidation or merger of Borrower that complies with the requirements of this Agreement, any surviving Person; or

(d) a "change of control" (or similar event) shall occur under (i) the Secured Notes Indenture or (ii) the definitive agreements pursuant to which any Indebtedness permitted under Section 10.04(xxvii) or (xxix) was issued or incurred, in each case of this subclause (ii) with an aggregate outstanding principal amount in respect of such Indebtedness in excess of the Threshold Amount.

Notwithstanding the preceding, a conversion of the Borrower or any Restricted Subsidiary from a limited liability company, corporation, limited partnership or other form of entity to a limited liability company, corporation, limited partnership or other form of entity or an exchange of all of the outstanding capital stock in one form of entity for capital stock for another form of entity shall not constitute a Change of Control, so long as immediately following such conversion or exchange the "persons" (as that term is used in Section 13(d)(3) of the Exchange Act) who beneficially owned the capital stock of such entity immediately prior to such transactions continue to beneficially own in the aggregate more than 50% of the voting stock of such entity, or continue to beneficially own sufficient Equity Interests in such entity to elect a majority of its directors, managers, trustees or other persons serving in a similar capacity for such entity, and in either case no "person" beneficially owns more than 50% of the voting stock of such entity. Furthermore, the transfer of assets between or among the Borrower and its Restricted Subsidiaries shall not itself constitute a Change of Control. Notwithstanding anything to the contrary in this definition or any provision of Section 13d-3 of the Exchange Act, no Person or "group" shall be deemed to beneficially own Equity Interests to be acquired by such Person or "group" pursuant to a stock or asset purchase agreement, merger or amalgamation agreement, option agreement, warrant agreement or similar agreement until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement.

"Chattel Paper" shall have the meaning provided in Article 9 of the UCC or, as applicable, in the PPSA.

"Closing Date" shall mean April 1, 2021.

"Closing Date Borrowing Base" shall have the meaning provided in the definition of "Borrowing Base."

"Closing Date Borrowing Base Termination Date" shall have the meaning provided in Section 9.17(f).

"Closing Date Material Adverse Effect" shall have the meaning assigned to the term "Material Adverse Effect" in the Acquisition Agreement.

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

"Collateral" shall mean, collectively, the U.S. Collateral, the Canadian Collateral and any other property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.13, including, without limitation, collateral as described in the U.S. Security Agreement and the Canadian Security Agreement. For the avoidance of doubt, in no event shall Collateral include Excluded Collateral or any interests in Real Property.

"Collateral Agent" shall mean Bank of America (including any of its Affiliates and branches), in its capacity as collateral agent for the Secured Creditors pursuant to the Security Documents and shall include its branch offices and affiliates in any applicable jurisdiction and any successor to the Collateral Agent appointed pursuant to Section 12.10.

"Commitment" shall mean, with respect to any Lender, such Lender's Revolving Commitment, LC Commitment or Swingline Commitment, or any Extended Revolving Loan Commitment of such Lender.

"Commitment Letter" shall mean that certain commitment letter, dated as of December 3, 2020, by and among the Borrower, Bank of America and BofA Securities, Inc., as amended, supplemented or otherwise modified by the joinders thereto entered into among the Borrower, PNC Capital Markets LLC, Wells Fargo Bank, N.A., Citibank, N.A., Deutsche Bank Securities Inc., BMO Capital Markets Corp., Fifth Third Bank, National Association, Morgan Stanley Senior Funding, Inc., MUFG Union Bank, N.A., RBC Capital Markets, LLC, CIBC Bank USA, Stifel Nicolaus and Company, Incorporated, Blackstone Holdings Finance Co. L.L.C., OPY Credit Corp. and the other Commitment Parties.

"Commitment Parties" shall have the meaning provided to such term in the Commitment Letter.

"Commodity Account" shall have the meaning assigned to such term in the U.S. Security Agreement and shall include a "Futures Account" as such term is defined in the Canadian Security Agreement.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" shall have the meaning provided in the recital hereto.

"Compliance Certificate" shall mean a certificate of a Responsible Officer of the Borrower substantially in the form of Exhibit J hereto, or otherwise in form and substance reasonably satisfactory to the Administrative Agent.

"Connection Income Taxes" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes, branch profits Taxes or Canadian capital Taxes.

"Consolidated Depreciation and Amortization Expense" shall mean, with respect to any Person, for any period, the total amount of depreciation and amortization expense, including (i) amortization of deferred financing fees and debt issuance costs, commissions, fees and expenses, (ii) amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits and (iii) amortization of intangibles (including, without limitation, amortization of turnaround costs, goodwill and organizational costs) (excluding any such adjustment to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such adjustment is subsequently reversed), in each case of such Person and its Restricted Subsidiaries for such period on a consolidated basis in accordance with U.S. GAAP.

"Consolidated EBITDA" shall mean, with respect to any Person for any Test Period, Consolidated Net Income of such Person for such Test Period; *plus* (without duplication):

(i) provision for taxes based on income, profits or capital (including state franchise taxes and similar taxes in the nature of income tax) of such Person and its Restricted Subsidiaries for such period, and foreign withholding taxes, giving effect to any payroll tax credits, income tax credits and similar credits and including an amount equal to the tax distributions actually made to the holders of the Equity Interests of such Person or any direct or indirect parent of such Person in respect of such period in accordance with Section 10.03(vi) as though such amounts had been paid as income taxes directly by such Person, in each case, to the extent such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(ii) the Consolidated Depreciation and Amortization Expense of such Person and its Restricted Subsidiaries for such period, to the extent such expenses were deducted in computing such Consolidated Net Income; *plus*

(iii) the Consolidated Interest Charges of such Person and its Restricted Subsidiaries for such period, to the extent such Consolidated Interest Charges were deducted in computing such Consolidated Net Income; *plus*

(iv) any other consolidated non-cash losses, charges and expenses of such Person and its Restricted Subsidiaries (including write-offs and write downs) for such period, to the extent such consolidated non-cash charges were included in computing such Consolidated Net Income; *provided* that if any such non-cash charge represents an accrual or reserve for anticipated cash charges in any future period, (i) such Person may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent such Person does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; *plus*

(v) any losses from foreign currency transactions (including losses related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent such losses were taken into account in computing such Consolidated Net Income; *plus*

(vi) the Specified Permitted Adjustments and any other cost savings, operating expense reductions, operating improvements and synergies permitted to be added back to this definition pursuant to the definition of "Pro Forma Cost Savings" (including, without limitation, expenses attributable to the implementation of such cost savings initiatives and costs and expenses incurred after the Closing Date related to employment of terminated employees incurred by such Person during such period to the extent such costs and expenses were deducted in computing Consolidated Net Income); *plus*

(vii) losses in respect of post-retirement benefits of such Person, as a result of the application of ASC 715, *Compensation-Retirement Benefits*, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(viii) the amount of fees, indemnities and expenses incurred or reimbursed by such Person pursuant to (a) the Advisory Agreement as in effect on the Closing Date during such period or pursuant to any amendment, modification or supplement thereto or replacement thereof, so long as the Advisory Agreement, as so amended, modified, supplemented or replaced, taken as a whole, is otherwise permitted hereunder and (b) Section 10.06(xii) hereunder; *plus*

(ix) any proceeds from business interruption insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; *plus*

(x) any fees and expenses related to a Qualified Securitization Transaction or any Receivables Facility to the extent such fees and expenses are included in computing Consolidated Net Income; *plus*

(xi) any contingent or deferred payments (including, without limitation, earn-out payments, noncompete payments and consulting payments) made in connection with the Acquisition or any acquisitions or Investments, to the extent paid in cash during such period; *plus*

(xii) the amount of loss or discount on sales of receivables and related assets to a Securitization Entity in connection with a Qualified Securitization Transaction or otherwise in connection with a Receivables Facility, to the extent included in computing Consolidated Net Income; *plus*

(xiii) the amount of any interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any Restricted Subsidiary of such Person that is not a Wholly-Owned Restricted Subsidiary of such Person; *plus*

(xiv) Acquired Rental Asset EBITDA; *provided* that no amount shall be added pursuant to this clause (xiv) to the extent (i) duplicative of any amounts otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period, (ii) the contract relating to such Acquired Rental Asset is no longer in effect as of such date of determination or (iii) such Acquired Rental Asset is no longer owned or part of the Rental Equipment as of such date of determination; *provided further* that any such add backs made pursuant to this clause (xiv) shall not exceed 25% of Consolidated EBITDA (after giving effect to such add backs); *plus*

(xv) with respect to any joint venture that is not a Restricted Subsidiary, an amount equal to the proportion of those items described in clauses (i), (ii) and (iii) above relating to such joint venture corresponding to such Person's and its Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Restricted Subsidiary) solely to the extent Consolidated Net Income of such joint venture was reduced thereby; *minus*

(xvi) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; *minus*

(xvii) any gains from foreign currency transactions (including gains related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent such gains were taken into account in computing such Consolidated Net Income; *minus*

(xviii) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period;

provided, that the Borrower may, in its sole discretion, elect to not make any adjustment for any item pursuant to the foregoing clauses (i) through (xviii) above if any such item individually is less than $2,000,000 in any fiscal quarter.

"Consolidated Fixed Charge Coverage Ratio" shall mean, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, *minus* (x) Capital Expenditures of the Borrower and its Restricted Subsidiaries paid in cash (excluding the proceeds of any Indebtedness (other than Indebtedness hereunder)) for such Test Period, (y) the amount of cash payments made during such Test Period (net of cash refunds received during such period up to the amount of such cash payments) by the Borrower and its Restricted Subsidiaries in respect of federal, state, local and foreign income taxes during such Test Period and (z) solely for the purpose of determining whether the Consolidated Fixed Charge Coverage Ratio described in clause (iii) of the definition of "Distribution Conditions" has been satisfied on such date, Dividends permitted by Section 10.03(xiii) paid in cash for such Test Period to (b) Consolidated Fixed Charges for such Test Period, in each case, calculated on a Pro Forma Basis.

"Consolidated Fixed Charges" shall mean, with respect to any period, for the Borrower and its Restricted Subsidiaries on a consolidated basis, the sum, without duplication, of (a) Consolidated Interest Charges for such period to the extent paid in cash (or accrued and payable on a current basis in cash) and (b) the aggregate amount of scheduled amortization payments of principal made during such period in respect of long-term Consolidated Indebtedness. Notwithstanding the foregoing, for purposes of calculating Consolidated Fixed Charges for any period that includes a fiscal quarter (or portion thereof) prior to the Closing Date, Consolidated Fixed Charges shall be calculated from the period from the Closing Date to the date of determination divided by the number of days in such period and multiplied by 365. For purposes of this definition, interest on Capitalized Lease Obligations will be deemed to accrue at the interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with U.S. GAAP.

"Consolidated Indebtedness" shall mean, at any time, the sum of (without duplication) (i) all Capitalized Lease Obligations of the Borrower and its Restricted Subsidiaries, (ii) all Indebtedness of the Borrower and its Restricted Subsidiaries of the type described in clause (i)(A) of the definition of "Indebtedness" and (iii) all Contingent Obligations of the Borrower and its Restricted Subsidiaries in respect of Indebtedness of any third Person of the type referred to in the preceding clauses (i) and (ii), in each case, determined on a consolidated basis in accordance with U.S. GAAP and calculated on a Pro Forma Basis; *provided* that Consolidated Indebtedness shall not include Indebtedness in respect of any Permitted Junior Notes that have been defeased or satisfied and discharged in accordance with the applicable indenture or with respect to which the required deposit has been made in connection with a call for repurchase or redemption to occur within the time period set forth in the applicable indenture, in each case to the extent such transactions are permitted by Section 10.07(a). For the avoidance of doubt, it is understood that obligations under any Receivables Facility and any Qualified Securitization Transaction do not constitute Consolidated Indebtedness.

"Consolidated Interest Charges" shall mean, with respect to any period, for the Borrower and its Restricted Subsidiaries on a consolidated basis, all cash interest, premium payments, debt discount, charges and related fees and expenses, net of interest income, of the Borrower and its Restricted Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with U.S. GAAP (including commissions, discounts, yield and other fees (including related interest expenses) related to any Qualified Securitization Transaction or any Receivables

Facility), excluding (a) up-front or financing fees, transaction costs, commissions, expenses, premiums or charges, (b) costs associated with obtaining, or breakage costs in respect of swap or hedging agreements, (c) amortization of deferred financing costs and (d) all cash dividends, whether paid or accrued, on any series of preferred stock or any series of Disqualified Stock of such Person or any of its Restricted Subsidiaries, excluding items eliminated in consolidation, in each case, determined on a consolidated basis in accordance with U.S. GAAP. Notwithstanding the foregoing, for purposes of calculating Consolidated Interest Charges for any period that includes a fiscal quarter (or portion thereof) prior to the Closing Date (other than as a component of Consolidated EBITDA), Consolidated Interest Charges shall be calculated from the period from the Closing Date to the date of determination divided by the number of days in such period and multiplied by 365.

"Consolidated Net Income" shall mean, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with U.S. GAAP and without any reduction in respect of (x) preferred stock dividends or (y) any dividend with proceeds of the offering of the Secured Notes; *provided* that:

(i) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses or charges (including related to the Transaction) or any restructuring charges or reserves, including, without limitation, any expenses related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;

(ii) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any equity issuance, Investment, acquisition, disposition, recapitalization or incurrence or repayment of, or amendment or waiver of the operative documents with respect to, Indebtedness permitted under this Agreement, including a refinancing thereof (in each case whether or not successful) (including any such costs and charges incurred in connection with the Transaction), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary course of business or the disposition of securities or the early extinguishment of Indebtedness or other derivative instruments, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;

(iii) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be excluded; *provided* that the income of such Person will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Restricted Subsidiary of the Person;

(iv) the net income (or loss) of any Person and its Restricted Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-Wholly-Owned Restricted Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Equity Interests of such Restricted Subsidiary held by such third parties;

(v) [reserved];

(vi) the cumulative effect of any change in accounting principles will be excluded;

(vii) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Borrower or a Restricted Subsidiary of the Borrower, will be excluded;

(viii) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of U.S. GAAP and the amortization of intangibles and other fair value adjustments arising from

the application of U.S. GAAP, including pursuant to ASC 805, *Business Combinations*, ASC 350, *Intangibles-Goodwill and Other*, or ASC 360, *Property*, *Plant and Equipment*, as applicable, will be excluded;

(ix) any net after-tax income or loss from disposed, abandoned, discontinued, transferred or closed operations and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations will be excluded;

(x) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or rent expense, any one time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Transaction or any other acquisition prior to or following the Closing Date will be excluded;

(xi) an amount equal to the tax distributions actually made to the holders of the Equity Interests of such Person or any direct or indirect parent of such Person in respect of such period in accordance with Section 10.03(vi) will be included as though such amounts had been paid as income taxes directly by such Person for such period;

(xii) unrealized gains and losses relating to foreign currency translation or foreign currency transactions, including those relating to mark-to-market of Indebtedness resulting from the application of U.S. GAAP, including pursuant to ASC 830, *Foreign Currency Matters*, (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;

(xiii) any net gain or loss from Swap Contracts in connection with the early extinguishment of Indebtedness or obligations under Swap Contracts (including of ASC 815, *Derivatives and Hedging*) will be excluded;

(xiv) the amount of any restructuring, business optimization, acquisition and integration costs and charges (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, recruiting and signing bonuses and expenses, contract termination costs, including future lease commitments, costs related to the start-up (including entry into new market/channels and new service offerings), preopening, opening, closure or relocation, reconfiguration or consolidation of facilities and costs to relocate employees, systems, facilities or equipment conversion costs, consulting fees, costs associated with tax projects and audits) or other fees related to any of the foregoing (including any such costs, charges and fees incurred in connection with the Transactions) will be excluded;

(xv) accruals and reserves that are established or adjusted within 24 months after the Closing Date that are so required to be established as a result of the Transaction in accordance with U.S. GAAP will be excluded;

(xvi) any Public Company Costs will be excluded;

(xvii) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses, costs of surety bonds, charges owed with respect to letters of credit, bankers' acceptances or similar facilities, and expensing of any bridge, commitment or other financing fees (including in connection with a transaction undertaken but not completed), will be excluded;

(xviii) all discounts, commissions, fees and other charges (including interest expense) associated with any Qualified Securitization Transaction will be excluded;

(xix) (A) the non-cash portion of "straight-line" rent expense will be excluded and (B) the cash portion of "straight-line" rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(xx) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in

fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(xxi) non-cash charges or income relating to adjustments to deferred tax asset valuation allowances will be excluded; and

(xxii) cash dividends or returns of capital from Investments (such return of capital not reducing the ownership interest in the underlying Investment), in each case received during such period, to the extent not otherwise included in Consolidated Net Income for that period or any prior period subsequent to the Closing Date will be included;

provided, that the Borrower may, in its sole discretion, elect to not make any adjustment for any item pursuant to the foregoing clauses (i) through (xxii) above if any such item individually is less than $2,000,000 in any fiscal quarter.

"Consolidated Secured Net Leverage Ratio" shall mean, at any time, the ratio of (x) Consolidated Indebtedness at such time that is secured by a lien on any assets of the Borrower and its Restricted Subsidiaries *less* the aggregate amount of (a) unrestricted cash and Cash Equivalents (but excluding in all cases cash proceeds from Indebtedness incurred on the date of determination) included on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries and (b) Permitted Restricted Cash to (y) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01 Financials were required to have been delivered. If the Consolidated Secured Net Leverage Ratio is being determined for a given Test Period, Consolidated Indebtedness shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

"Consolidated Total Assets" shall mean, as of any date of determination, the amount that would, in conformity with U.S. GAAP, be set forth opposite the caption "total assets" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of the last day of the most recently ended Test Period.

"Consolidated Total Net Leverage Ratio" shall mean, with respect to any Test Period, the ratio of (i) Consolidated Indebtedness as of the last day of such Test Period, *less* the aggregate amount of (a) unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries and (b) Permitted Restricted Cash to (ii) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such Test Period, in each case, calculated on a Pro Forma Basis.

"Contingent Obligation" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. Except as otherwise provided herein, the amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

"Contribution Amounts" shall mean the aggregate amount of capital contributions applied by the Borrower to permit the incurrence of Contribution Indebtedness pursuant to Section 10.04(ix).

"Contribution Indebtedness" shall mean Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount not greater than the aggregate amount of cash contributions (other than the proceeds from the issuance of Disqualified Stock, contributions by the Borrower or any Restricted Subsidiary or any Specified Equity Contribution made to the capital of the Borrower or such Restricted Subsidiary after the Closing Date (whether through the issuance or sale of capital stock or otherwise)), in each case, to the extent not otherwise applied to increase other basket or exception under this Agreement; *provided* that (a) the maturity date of such

Contribution Indebtedness is no earlier than the Latest Maturity Date as of the date such Contribution Indebtedness was incurred and (b) such Contribution Indebtedness is so designated as Contribution Indebtedness pursuant to a certificate of a Responsible Officer of the Borrower promptly following incurrence thereof.

"Cost" shall mean the cost of purchase of Inventory determined according to the accounting policies used in the preparation of the Borrower's audited financial statements.

"Covered Entity" shall mean any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Credit Documents" shall mean this Agreement, and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note, the Guaranty Agreement, each Security Document, the Intercreditor Agreement, any Additional Intercreditor Agreement, each Incremental Revolving Commitment Amendment and each Extension Amendment.

"Credit Event" shall mean the making of any Loan.

"Credit Extension" shall mean, as the context may require, (i) a Credit Event or (ii) the issuance, amendment, extension or renewal of any Letter of Credit by any Issuing Bank; *provided* that "Credit Extensions" shall not include conversions and continuations of outstanding Loans.

"Credit Party" shall mean Holdings, the Borrower and each Subsidiary Guarantor.

"Debtor Relief Laws" shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, administration, examinership, moratorium, rearrangement, receivership, insolvency, judicial management, reorganization or similar debtor relief laws of the United States, Canada or other applicable jurisdictions from time to time in effect, including any proceeding under corporate law or other law of any jurisdiction whereby a corporation seeks a stay or a compromise of the claims of its creditors against it and each of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-up and Restructuring Act* (Canada).

"Default" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Default Right" shall have the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" shall mean, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has other than via an Undisclosed Administration, (i) become the subject of (A) a proceeding under any Debtor Relief Law or (B) a Bail-In Action, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation, the Canada

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

"Deposit Account" shall have the meaning assigned thereto in Article 9 of the UCC and includes a demand, deposit, time, savings, passbook, or similar account maintained with a bank, credit union, trust company or other financial institution.

"Deposit Account Control Agreement" shall mean a Deposit Account control agreement to be executed by each institution maintaining a Deposit Account (other than an Excluded Account) for any Credit Party, in each case as required by and in accordance with the terms of Section 9.17, and for greater certainty includes a customary blocked account control agreement in respect of each Deposit Account (other than an Excluded Account) located in Canada.

"Designated Account" shall mean the Deposit Account of the Borrower identified on Schedule 2.02 to this Agreement (or such other Deposit Account of the Borrower that has been designated as such, in writing, by the Borrower to Administrative Agent).

"Designated Non-cash Consideration" shall mean the fair market value of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an asset sale that is so designated as Designated Non-cash Consideration pursuant to an officers' certificate, setting forth the basis of such valuation, *less* the amount of cash and Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

"Dilution" shall mean for any period with respect to any Credit Party, the fraction, expressed as a percentage, the numerator of which is the aggregate amount of reductions in the Accounts of such Credit Party for such period other than by reason of dollar for dollar cash payment and the denominator of which is the aggregate dollar amount of the sales of such Credit Party for such period.

"Dilution Reserve" shall mean, as of any date of determination, an amount (initially $0) sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) for each percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) by which Dilution is in excess of an amount to be determined by the Administrative Agent in its Permitted Discretion.

"Disqualified Lender" shall mean (a) competitors of the Borrower, the Target and their respective Subsidiaries, and any Person controlling or controlled by any such competitor, in each case identified in writing by the Borrower (or its counsel) to the Administrative Agent at any time, (b) institutions designated in writing by the Borrower (or its counsel) to Bank of America (or its counsel) on or prior to December 3, 2020 and (c) any affiliates of any such competitors, controlling or controlled Persons or institutions reasonably identifiable as affiliates solely on the basis of their names (other than bona fide fixed income investors or debt funds that are affiliates of competitors described in clause (a) above but not of institutions described in clause (b) above) or identified by the Borrower (or its counsel) in writing to the Administrative Agent at any time (it being understood that any update pursuant to clause (a) or clause (c) above shall not become effective until the third Business Day following the Administrative Agent's receipt of such notice, and, in any event, shall not apply retroactively (solely with regards to such amount already assigned) or to any entity that is party to a pending trade as of the date of such notice).

"Disqualified Stock" shall mean, with respect to any Person, any capital stock of such Person other than common Equity Interests or Qualified Preferred Stock of such Person.

"Distribution Conditions" shall mean as to any relevant action contemplated in this Agreement, (i) no Event of Default has then occurred and is continuing or would immediately result from any action, (ii) (a) Specified Excess Availability on a Pro Forma Basis immediately after giving effect to such action would be at least the greater of (x) 15.0% of the Line Cap and (y) $90,000,000 and (b) over

the 30 consecutive days prior to consummation of such action, Specified Excess Availability averaged no less than the greater of (x) 15.0% of the Line Cap and (y) $90,000,000, on a Pro Forma Basis for such action and (iii) if (a) Specified Excess Availability on a Pro Forma Basis immediately after giving effect to such action is less than 25% of the Revolving Commitments or (b) over the 30 consecutive days prior to consummation of such action, Specified Excess Availability averaged less than 25% of the Revolving Commitments on a Pro Forma Basis for such action, the Consolidated Fixed Charge Coverage Ratio would be at least 1.00 to 1.00 on a Pro Forma Basis for such action.

"Dividend" shall mean, with respect to any Person, that such Person has paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or made or caused to be made any other payment or delivery of property (other than common equity of such Person) to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any shares of any class of its capital stock or any partnership or membership interests outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Equity Interests).

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

"Dollar Equivalent" shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Dominion Account" shall mean, collectively, the U.S. Dominion Account and the Canadian Dominion Account.

"EEA Financial Institution" shall mean (a) any institution 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 institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"Eligible Accounts" shall mean, on any date of determination of the Borrowing Base, all of the Accounts owned by all applicable Credit Parties and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent, except any Account to which any of the exclusionary criteria set forth below applies. Eligible Accounts shall not include any of the following:

(a) Accounts that (i) the Account Debtor has failed to pay within 120 days of original invoice date or (ii) are not paid and are more than 60 days past due; *provided* that up to $5,000,000 of Accounts that are not paid more than 120 but less than 150 days after the date of the original invoice therefor shall not be excluded pursuant to clause (a)(i);

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above;

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Credit Party or an employee or agent of a Credit Party or any Affiliate of a Credit Party; unless such Account is on arm's-length terms and arises in the ordinary course of business of such Credit Party and such Affiliate and is administered in accordance with the customary collection and credit policies of a Credit Party; *provided* that the aggregate amount of all such Accounts included in the calculation of Eligible Accounts shall not exceed 10% of the Eligible Accounts;

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional;

(e) Accounts that are not payable in Dollars or Canadian Dollars; *provided* that, as to any Accounts payable in Canadian Dollars, the Administrative Agent shall, at its option, establish such reserves as it may determine in its Permitted Discretion in respect of such Accounts;

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States, Canada or any state, territory or province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to the Administrative Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to the Administrative Agent and is directly drawable by the Administrative Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to the Administrative Agent;

(g) Accounts which exceed $5,000,000 in the aggregate and with respect to which the Account Debtor is (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which the Credit Parties have complied, to the reasonable satisfaction of the Administrative Agent, with the Assignment of Claims Act, 31 U.S.C. § 3727) or (ii) any State (or political subdivision) of the United States;

(h) Accounts with respect to which the Account Debtor is a creditor of a Credit Party, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute;

(i) Accounts with respect to an Account Debtor whose total obligations owing to a Credit Party exceed 25% (such percentage, as applied to a particular Account Debtor, being subject to reduction by the Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; *provided*, that, in each case, the amount of Eligible Accounts of an Account Debtor that are excluded because such Eligible Accounts exceed the then applicable percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the then applicable concentration limit;

(j) Accounts with respect to which the Account Debtor is subject to an any case or proceeding under any Debtor Relief Laws, is not Solvent, has gone out of business, or as to which a Credit Party has received notice of an imminent case or proceeding under any Debtor Relief Laws or a material impairment of the financial condition of such Account Debtor;

(k) Accounts, the collection of which, the Administrative Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition;

(l) Accounts in which the Collateral Agent, on behalf of the Secured Creditors, does not have a first priority (subject to Permitted Borrowing Base Liens) perfected Lien;

(m) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor;

(n) Accounts with respect to which the Account Debtor is a Sanctioned Person;

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by a Credit Party of the subject contract for goods or services;

(p) Accounts with respect to which the Account Debtor is located in Minnesota (or any other jurisdiction which adopts a statute or other requirement with respect to which any Person that obtains business from within such jurisdiction or is otherwise subject to such jurisdiction's tax Law requiring such Person to file a Business Activity Report or make any other required filings in a timely manner in order to enforce its claims in such jurisdiction's courts or arising under such jurisdiction's laws); *provided*, that, such receivables shall nonetheless be eligible if a Credit Party has filed a Business Activity Report (or other applicable

report or filing) with the applicable state office by the time required or is qualified to do business in such jurisdiction and, at the time the receivable was created, was qualified to do business in such jurisdiction or had on file with the applicable state office a current Business Activity Report (or other applicable report or filing);

(q) Accounts with respect to which the Account Debtor's obligation does not constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement may be limited by equitable principles or by Debtor Relief Laws;

(r) any Accounts (i) of an Acquired Entity or Business acquired in connection with a Permitted Acquisition or similar Investment, or (ii) acquired in a bulk sale transaction, in each case, until the completion of a field examination satisfactory to the Administrative Agent in its Permitted Discretion with respect to such Accounts, in each case, to the extent that (x) unless otherwise agreed to by the Administrative Agent in its Permitted Discretion, such Accounts are not of a substantially similar type to the Accounts included in the Borrowing Base or (y) such Accounts (together with all Inventory deemed ineligible pursuant to clause (m)(y) of the definition of "Eligible Inventory") would account for more than 15% of the Borrowing Base;

(s) any Accounts which relate to the sale of any assets subject to a Floor Plan Financing;

(t) any Account that does not arise from the sale of goods or the performance of services by a Credit Party in the ordinary course of its business;

(u) any Account that does not comply in all material respects with all applicable legal requirements, including, without limitation, all laws, rules, regulations and orders of any Governmental Authority;

(v) any Account that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;

(w) any Account with respect to which an invoice or other electronic transmission constituting a request for payment, reasonably acceptable to the Administrative Agent in form and substance, has not been sent on a timely basis to the applicable Account Debtor according to the normal invoicing and timing procedures of the Credit Parties or with respect to which the Credit Party is otherwise unable to request payment from the Account Debtor according to the underlying contract;

(x) any Account as to which any of the representations or warranties in the Credit Documents are untrue in any material respect (to the extent such materiality relates to the amount owing on such Account);

(y) any Account which is evidenced by a judgment, Instrument (as defined in the U.S. Security Agreement or the Canadian Security Agreement, as applicable) or Chattel Paper (as defined in the U.S. Security Agreement or the Canadian Security Agreement, as applicable) and such Instrument or Chattel Paper is not pledged and delivered to the Administrative Agent under the Security Documents;

(z) any Account arising on account of a supplier rebate, unless the Credit Parties have received a waiver of offset from the supplier in form and substance reasonably satisfactory to the Administrative Agent;

(aa) any Account which is owing in respect of interest and late charges or fees in respect of Indebtedness;

(bb) any Account as to which the contract or agreement underlying such Account is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than the United States, any state thereof, the District of Columbia, Canada or any province or territory thereof;

(cc) [reserved];

(dd) any Account which is excluded from the scope of any Security Document by virtue of the definition of "Excluded Collateral" (or equivalent terminology in any such Security Document); or

(ee) other such Accounts identified as ineligible in the Initial Field Exam and Appraisal delivered on the Closing Date Borrowing Base Termination Date.

"Eligible Cash" shall mean, with respect to any Person, unrestricted cash and Cash Equivalents of such Person in each case that is on deposit in a U.S. Deposit Account or Canadian Deposit Account that is (i) in the case of any unrestricted cash, held in Deposit Accounts with the Administrative Agent or its affiliates or branches, (ii) subject to a Lien and control agreement (where applicable and subject to the post-closing period set forth in Section 9.17(c) and (d)) in favor of the Collateral Agent in a form acceptable to the Collateral Agent in its Permitted Discretion, (iii) not subject to any Liens (other than Permitted Borrowing Base Liens and junior priority Liens in favor of or pursuant to the Secured Notes Indenture and the credit documents related thereto, any Credit Document, and any Permitted Junior Debt Documents (to the extent such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) and (iv) held in a segregated Deposit Account which holds only the proceeds of receivables not relating to assets that are collateral under any Floor Plan Financing (*provided*, for the avoidance of doubt, that the Borrower shall have until the Closing Date Borrowing Base Termination Date (or such longer period as the Administrative Agent may agree in its reasonable discretion) to segregate such accounts); *provided*, *further*, that (x) on any relevant date of determination, the amount of Eligible Cash shall be based on the then current balance of such Deposit Accounts as of such date and (y) at any time that (i) a Credit Extension is requested, (ii) the Payment Conditions or the Distribution Conditions are tested or (iii) a Borrowing Base Certificate is delivered, the Collateral Agent reserves the right to verify the balance of such account.

"Eligible Fleet Inventory" shall mean Fleet Inventory to the extent such Fleet Inventory meets the qualifications of "Eligible Inventory" (other than with respect to clauses (b), (c) and (k) of such definition) and to the extent such Fleet Inventory also meets each of the following requirements:

(a) the Credit Parties have the right to subject such Fleet Inventory to a Lien in favor of the Collateral Agent;

(b) such Fleet Inventory is subject to a first priority (except for Permitted Borrowing Base Liens) perfected Lien in favor of the Collateral Agent; *provided* that with respect to Titled Goods otherwise constituting Eligible Fleet Inventory (x) that are owned by a Credit Party on the Closing Date, during the period from the Closing Date until the date that is 120 days after the Closing Date, or (y) acquired at any time after the Closing Date, so long as the Payment Conditions applicable to a Permitted Acquisition described in clause (i) or (ii) of the definition thereof are then met, during the period from the date of acquisition of such Titled Goods until the date that is the later of (A) 30 days after such date of acquisition and (B) 120 days after the Closing Date, in each case, such Titled Goods shall be deemed to have met the requirements of this clause (b) regardless of whether such Titled Goods are actually subject to a perfected first priority Lien in favor of the Collateral Agent at such time;

(c) the purchase price for such Fleet Inventory has been paid by the applicable Credit Party in full;

(d) such Fleet Inventory is in good working order and condition (ordinary wear and tear excepted);

(e) subject to the rights of the lessee of such Fleet Inventory in possession of such Fleet Inventory in accordance with terms of the lease with respect thereto, such Fleet Inventory is not subject to any agreement which restricts the ability of the Credit Parties to use, sell, transport or dispose of such Fleet Inventory or which restricts the Collateral Agent's ability to take possession of, or dispose of such Fleet Inventory;

(f) such Fleet Inventory does not constitute "fixtures" under the applicable Laws of the jurisdiction in which such Fleet Inventory is located;

(g) such Fleet Inventory is (i) located at one of the locations in the continental United States or Canada set forth on Schedule 1.01(C), (ii) located on Real Property owned or leased by a Credit Party, in a contract warehouse, or with bailees or other third parties in the United States or Canada, and which Fleet Inventory is segregated or otherwise separately identifiable

from goods of others, if any, stored on the premises (or in-transit from one such location to another such location), (iii) being leased by a customer of a Credit Party and used by such customer or the lessee of such customer at a location of such customer or the lessee of such customer in the United States or Canada pursuant to the terms of a Lease or other rental agreement entered into between such customer and such Credit Party or such customer and its lessee, as applicable, and as reflected in the records of such Credit Party or the Borrower or in transit to or from such location in the ordinary course of business, or (iv) located at third party locations for repair or maintenance in the ordinary course of business consistent with the current practices of such Credit Party or in transit to or from such location in the ordinary course of business;

(h) such Fleet Inventory is not at the location of the seller of such Fleet Inventory to such Credit Party or in transit to such Credit Party or to the location of the lessee of such Fleet Inventory from such location of the seller, and which Fleet Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises;

(i) such Fleet Inventory is available to rent or for sale (subject to clause (n) of the definition of "Eligible Inventory") to customers of the applicable Credit Parties in the ordinary course of business; and

(j) such Fleet Inventory is covered by casualty insurance (subject to customary deductibles).

"Eligible Inventory" shall mean, subject to adjustment as set forth below, items of Inventory of any applicable Credit Party held for sale or lease in the ordinary course of business or furnished under any contract of service by a Credit Party. Eligible Inventory shall exclude any Inventory to which any of the exclusionary criteria set forth below applies. Eligible Inventory shall not include any Inventory of the Credit Parties that:

(a) a Credit Party does not have good, valid and marketable title thereto;

(b) a Credit Party does not have actual and exclusive possession thereof (either directly or through a bailee or agent of such Credit Party);

(c) is not located (i) at one of the locations in the continental United States or Canada set forth on Schedule 1.01(C), or (ii) on Real Estate owned or leased by a Credit Party, in a contract warehouse, or with bailees or other third parties in the United States or Canada, which Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises (or in-transit from one such location to another such location);

(d) is in-transit and has been sold to a dealer or distributor of a Credit Party and is in the process of being delivered to that dealer or distributor;

(e) is the subject of a bill of lading or other document of title (other than the same delivered to the Collateral Agent as to goods in transit as provided in clause (c) above);

(f) is not subject to a first priority (subject to Permitted Borrowing Base Liens) perfected Lien in favor of the Collateral Agent; *provided* that with respect to Titled Goods otherwise constituting Eligible Fleet Inventory (x) that are owned by a Credit Party on the Closing Date, during the period from the Closing Date until the date that is 120 days after the Closing Date, or (y) acquired at any time after the Closing Date, so long as the Payment Conditions applicable to a Permitted Acquisition described in clause (i) or (ii) of the definition thereof are then met, during the period from the date of acquisition of such Titled Goods until the date that is the later of (A) 30 days after such date of acquisition and (B) 120 days after the Closing Date, in each case, such Titled Goods shall be deemed to have met the requirements of this clause (f) regardless of whether such Titled Goods are actually subject to a perfected first priority Lien in favor of the Collateral Agent at such time;

(g) consists of goods returned or rejected by a Credit Party's customers (except to the extent that such goods may thereafter be included in Inventory and held for sale or lease in the ordinary course of business);

(h) consists of goods that are obsolete or slow moving, not in good condition, not either currently usable or currently saleable in the ordinary course of the Credit Parties' business or does not meet all material standards imposed by any governmental authority having regulatory authority over such item of Inventory, its use or its sale, work-in-process, raw

materials, or packaging and shipping materials, supplies used or consumed in the Credit Parties' business, bill and hold goods, defective goods, "seconds," Inventory consigned to a third party for sale or Inventory acquired on consignment;

(i) is subject to any third party licensing or other proprietary rights of any Person the effect of which would be to limit the ability of the Collateral Agent to freely sell the inventory without further consent or payment to the licensor or such other Person on and after the occurrence of an Event of a Default;

(j) is Inventory for which a Credit Party (i) is acting as a bailee or (ii) has received progress payments;

(k) is leased by a Credit Party, as lessor, to a third party;

(l) is acquired by a Credit Party after the Closing Date (other than from another Credit Party), unless and until such time as the Administrative Agent shall have received or conducted (1) appraisals, from appraisers reasonably satisfactory to the Administrative Agent, of such Inventory acquired in such acquisition and (2) such other due diligence as the Administrative Agent may reasonably require in order to determine the appropriate advance rate against such Inventory, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent; *provided* that the foregoing shall only apply to Inventory to the extent (x) unless otherwise agreed to by the Administrative Agent in its Permitted Discretion, such Inventory is not of a substantially similar type to the Inventory included in the Borrowing Base or (y) such Inventory (together with all Accounts deemed ineligible pursuant to clause (s)(y) of the definition of "Eligible Accounts") would account for more than 15% of the Borrowing Base;

(m) any Inventory which is excluded from the scope of any Security Document by virtue of the definition of "Excluded Collateral" (or equivalent terminology in any such Security Document);

(n) any Inventory which is subject to a Floor Plan Financing;

(o) in the case of Parts Inventory, any such Parts Inventory which is attached to any other Inventory which is subject to a Floor Plan Financing;

(p) any Inventory that was previously subject to a Floor Plan Financing, unless (i) the Administrative Agent shall have received evidence reasonably satisfactory to it that such Inventory is free and clear of any Liens relating to such Floor Plan Financing (including, without limitation, UCC financing statement terminations and/or PPSA financing change statements and evidence that any certificates of title with respect to such Inventory are not subject to any Lien) and (ii) such Inventory is subject to a first priority (subject to Permitted Borrowing Base Liens) perfected Lien in favor of the Collateral Agent;

(q) except as otherwise agreed by the Administrative Agent, does not conform in all material respects to the representations or warranties pertaining to Inventory set forth in the Credit Documents;

(r) such Inventory is not covered by casualty insurance (subject to customary deductibles);

(s) which is located at any location where the aggregate value of all Eligible Inventory of the Credit Parties at such location is less than $100,000; or

(t) such other Inventory identified as ineligible in the Initial Field Exam and Appraisal delivered on the Closing Date Borrowing Base Termination Date.

"Eligible Leased Parts Inventory" shall mean Leased Parts Inventory to the extent such Leased Parts Inventory meets the qualifications of "Eligible Inventory" (other than with respect to clauses (b), (c) and (k) of such definition) and to the extent such Leased Parts Inventory also meets each of the following requirements:

(a) a Credit Party has the right to subject such Leased Parts Inventory to a Lien in favor of the Collateral Agent;

(b) such Leased Parts Inventory is subject to a first priority (subject to Permitted Borrowing Base Liens) perfected Lien in favor of the Collateral Agent;

(c) the purchase price for such Leased Parts Inventory has been paid by a Credit Party in full;

(d) such Leased Parts Inventory is in good working order and condition (ordinary wear and tear excepted);

(e) subject to the rights of the lessee of such Leased Parts Inventory in possession of such Leased Parts Inventory in accordance with terms of the lease with respect thereto, such Leased Parts Inventory is not subject to any agreement which restricts the ability of a Credit Party to use, sell, transport or dispose of such Leased Parts Inventory or which restricts the Collateral Agent's ability to take possession of, sell or otherwise dispose of such Leased Parts Inventory;

(f) such Leased Parts Inventory does not constitute "fixtures" under the applicable Laws of the jurisdiction in which such Leased Parts Inventory is located;

(g) such Leased Parts Inventory is (i) located at one of the locations in the continental United States or Canada set forth on Schedule 1.01(C), (ii) located on Real Property owned or leased by a Credit Party, in a contract warehouse, or with bailees or other third parties in the United States or Canada, and which Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises (or in-transit from one such location to another such location), (iii) being leased by a customer of a Credit Party and used by such customer or the lessee of such customer at a location of such customer or the lessee of such customer in the United States or Canada pursuant to the terms of a Lease or other rental agreement entered into between such customer and such Credit Party or such customer and its lessee, as applicable, and as reflected in the records of such Credit Party or the Borrower or in transit to or from such location in the ordinary course of business, (iv) located at third-party locations for repair or maintenance in the ordinary course of business consistent with its current practices or in transit to or from such location in the ordinary course of business;

(h) such Leased Parts Inventory is not at the location of the seller of such Leased Parts Inventory to such Credit Party or in transit to such Credit Party or to the location of the lessee of such Leased Parts Inventory from such location of the seller, and which Leased Parts Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises;

(i) such Leased Parts Inventory is available to rent to customers of a Credit Party in the ordinary course of business; and

(j) such Leased Parts Inventory is covered by casualty insurance (subject to customary deductibles).

"Eligible New Parts Inventory" shall mean all New Parts Inventory that is Eligible Inventory.

"Eligible Parts Inventory" shall mean all Eligible Leased Parts Inventory and all Eligible New Parts Inventory.

"Eligible Transferee" shall mean and include any existing Lender, any Approved Fund or any commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) but in any event excluding (i) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (ii) any Disqualified Lender (solely, in the case of a sale of a participation to such Person, to the extent that the list of Disqualified Lenders has been disclosed to all Lenders) and (iii) Platinum, Holdings, the Borrower and their respective Subsidiaries and Affiliates.

"Environment" shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub-surface strata and natural resources such as wetlands, flora and fauna.

"Environmental Claims" shall mean any and all administrative, regulatory or judicial actions, suits, demand letters, directives, claims, liens, notices of noncompliance or violation, and/or proceedings arising under or pursuant to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law, including, without limitation, (a) any and all Environmental

Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.

"Environmental Law" shall mean any federal, state, provincial, territorial, foreign, municipal or local statute, law, rule, regulation, ordinance, code, and rule of common law, now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the Environment, or occupational health and safety.

"Equity Interests" of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, but excluding, for the avoidance of doubt, any Indebtedness convertible into or exchangeable for the foregoing.

"Equity Offering" shall mean a public or private sale of either (1) Equity Interests of the Borrower by the Borrower (other than Disqualified Stock and other than to a Subsidiary of the Borrower or any direct or indirect parent of the Borrower) or (2) Equity Interests of a direct or indirect parent of the Borrower (other than to the Borrower, a Subsidiary of the Borrower or any direct or indirect parent of the Borrower), in each case other than public offerings with respect to the Borrower's or any direct or indirect parent company's common stock registered on Form S-8, and any such public or private sale that constitutes an Excluded Contribution.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor Section thereof.

"ERISA Affiliate" shall mean each person (as defined in Section 3(9) of ERISA) which together with the Borrower or a Restricted Subsidiary of the Borrower, is treated as a "single employer" under Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Section 414(m) or (o) of the Code.

"ERISA Event" shall mean (a) any "reportable event," as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Section 412 or 430 of the Code or Section 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Borrower, a Restricted Subsidiary of the Borrower, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Borrower, a Restricted Subsidiary of the Borrower, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (e) the receipt by the Borrower, a Restricted Subsidiary of the Borrower, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (f) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (g) the receipt by the Borrower, a Restricted Subsidiary of the Borrower, or an ERISA Affiliate of any written notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Borrower, a Restricted Subsidiary of the Borrower, or an ERISA Affiliate from a Multiemployer Plan or a written determination that a Multiemployer Plan is, or is reasonably expected to be, "insolvent," within the meaning of Section 4245 of ERISA, (h) the occurrence of any non-exempt "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Borrower or any Restricted Subsidiary is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any Restricted Subsidiary would reasonably be expected to have liability, (i) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (j) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (k) a determination that any Plan is in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (l) the receipt by the Borrower, a Restricted Subsidiary of the Borrower or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is reasonably expected to be, in "endangered" or "critical" status within the meaning of Section 305 of ERISA, or (m) any other extraordinary event or condition

with respect to a Plan or Multiemployer Plan which would reasonably be expected to result in a Lien or any acceleration of any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" shall have the meaning provided in Article 11.

"Examiner" shall have the meaning provided in the definition of "Initial Field Exam and Appraisal."

"Excluded Account" shall mean a Deposit Account, Securities Account or Commodity Account (i) which is used for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (ii) which is used solely for paying taxes, including sales taxes, (iii) which is used as an escrow account or as a fiduciary or trust account or is otherwise held exclusively for the benefit of an unaffiliated third party (including any account solely holding amounts representing fines, violations, fees and similar amounts paid by third parties and owed to municipalities), (iv) which is a zero balance Deposit Account, Securities Account or Commodity Account, (v) which is not otherwise subject to the disbursement provisions of this definition and, together with any other Deposit Accounts, Securities Accounts or Commodity Accounts that are excluded pursuant to this clause (v), have an average daily balance for any fiscal month of less than $3,000,000 in aggregate, (vi) which is a Venmo, Stripe, PayPal or other payment processor account or (vii) which is owned by a Specified Floor Plan Company and used solely for the purposes of collection of the proceeds of the sale of any assets subject to a Floor Plan Financing.

"Excluded Collateral" shall mean, with respect to (i) a U.S. Credit Party, the meaning provided in the U.S. Security Agreement, or (ii) a Canadian Credit Party, the meaning provided in the Canadian Security Agreement.

"Excluded Contributions" shall mean cash and/or Cash Equivalents received by the Borrower after the Closing Date from:

(1) contributions to its common equity capital; and

(2) the sale (other than to the Borrower or to a 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 or any Subsidiary of the Borrower) of capital stock (other than Disqualified Stock or Qualified Preferred Stock) of the Borrower;

in each case designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower, the proceeds of which are excluded from the calculation set forth in Section 10.03(xii).

"Excluded Subsidiary" shall mean any Subsidiary of the Borrower that is (a) an Unrestricted Subsidiary, (b) a FSHCO, (c) not a Wholly-Owned Subsidiary of the Borrower or one or more of its Wholly-Owned Restricted Subsidiaries, (d) an Immaterial Subsidiary, (e) established or created pursuant to Section 10.05(xi) and meeting the requirements of the proviso thereto; *provided* that such Subsidiary shall only be an Excluded Subsidiary for the period prior to such acquisition, (f) prohibited (but only for so long as such Subsidiary would be prohibited) by applicable law, rule or regulation from guaranteeing the facilities under this Agreement, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee, in each case, unless such consent, approval, license or authorization has been received (but without obligation to seek the same), (g) prohibited (but only for so long as such Subsidiary would be prohibited) from guaranteeing the Obligations by any contractual obligation in existence (x) on the Closing Date or (y) at the time of the acquisition of such Subsidiary after the Closing Date (to the extent such prohibition was not entered into in contemplation of such acquisition), (h) a not-for-profit Subsidiary or a captive insurance company, (i) any other Subsidiary with respect to which the Borrower and the Administrative Agent reasonably agree in writing that the cost or other consequences of guaranteeing the Obligations (including any adverse tax consequences) shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (j) any Subsidiary that is not (i) a U.S. Subsidiary or (ii) a Canadian Subsidiary that is a Guarantor on the Closing Date, unless such Canadian Subsidiary, at the Borrower's election, becomes a party to the Guaranty Agreement in accordance with the requirements of this Agreement or the provisions of the Guaranty Agreement, and (k) any U.S. Subsidiary of a Foreign Subsidiary that is a CFC.

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Guaranty of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to any "keepwell, support or other agreement" for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Credit Parties) at the time the Guaranty of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to any "keepwell, support or other agreement" for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Credit Parties) at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes illegal.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.22(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.01(e), (d) any Taxes imposed under FATCA and (e) any U.S. federal backup withholding under Section 3406 of the Code.

"Existing Investors" shall mean the investment funds affiliated with Energy Capital Partners, Capitol Acquisition Management IV, LLC, Capitol Acquisition Founder IV, LLC and certain other existing investors which, following the Transaction, will continue to own common stock and private warrants of Holdings.

"Existing Letters of Credit" shall mean each of the letters of credit set forth on Schedule 1.01(A) hereto.

"Existing Nesco Indenture" shall have the meaning provided in the definition of "Nesco Refinancing."

"Existing Revolving Loans" shall have the meaning assigned to such term in Section 2.19(a).

"Extended Revolving Loan Commitments" shall mean one or more commitments hereunder to convert Existing Revolving Loans to Extended Revolving Loans of a given Extension Series pursuant to an Extension Amendment.

"Extended Revolving Loans" shall have the meaning assigned to such term in Section 2.19(a).

"Extended SEC Reporting Deadline" shall have the meaning assigned to such term in Section 9.01.

"Extending Lender" shall have the meaning provided in Section 2.19(c).

"Extension Amendment" shall have the meaning provided in Section 2.19(d).

"Extension Election" shall have the meaning provided in Section 2.19(c).

"Extension Request" shall have the meaning provided in Section 2.19(a).

"Extension Series" shall have the meaning provided in Section 2.19(a).

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

"FCCR Test Amount" shall have the meaning provided in Section 10.11(a).

"Federal Funds Rate" shall mean, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as reasonably determined by the Administrative Agent; *provided* that if the rate determined in accordance with the foregoing is less than zero, the Federal Funds Rate shall be deemed to be zero.

"Fee Letter" shall mean that certain base fee letter, dated as of December 3, 2020, by and among the Borrower, Bank of America and BofA Securities, Inc., as amended, supplemented or otherwise modified by the joinders thereto entered into among the Borrower, PNC Capital Markets LLC, Wells Fargo Bank, N.A., Citibank, N.A., Deutsche Bank Securities Inc., BMO Capital Markets Corp., Fifth Third Bank, National Association, Morgan Stanley Senior Funding, Inc., MUFG Union Bank, N.A., RBC Capital Markets, LLC, CIBC Bank USA, Stifel Nicolaus and Company, Incorporated, Blackstone Holdings Finance Co. L.L.C., OPY Credit Corp. and the other Commitment Parties.

"Fees" shall mean all amounts payable pursuant to or referred to in Section 2.05.

"Financial Statements" shall have the meaning provided in Section 6.11.

"Fleet Inventory" shall mean utility trucks, specialty equipment and similar goods owned by the Credit Parties comprising the Credit Parties' leased and rental equipment fleet and equipment fleet held for sale.

"Floor Plan Financing" shall mean financing arrangements pursuant to which a capital provider agrees to extend credit to a Specified Floor Plan Company to finance the purchase of vehicles and other related assets that are either held available for sale or as inventory by such Specified Floor Plan Company, and pursuant to which such Specified Floor Plan Company grants to such capital provider a security interest in such specific vehicles and other related assets financed by such capital provider and the proceeds thereof; *provided* that (i) no Subsidiary that is not a Specified Floor Plan Company shall be a borrower in respect of such arrangements and in no event shall such security interest apply to any Certificated Rental Equipment and (ii) the terms of any such Floor Plan Financing shall be substantially similar to the terms of any Floor Plan Financing in existence on the Closing Date with changes that are not materially adverse to the Lenders as determined by the Borrower and the Administrative Agent in their reasonable discretion.

"Foreign Subsidiaries" shall mean each Subsidiary of the Borrower that is not a U.S. Subsidiary.

"Fronting Exposure" shall mean a Defaulting Lender's Pro Rata Share of LC Exposure, except to the extent allocated to other Lenders under Section 2.11.

"Fronting Fee" shall have the meaning provided in Section 2.05(c).

"FSHCO" shall mean any Subsidiary that has no material assets other than (i) the Equity Interests (or Equity Interests and Indebtedness) of one or more Foreign Subsidiaries of the Borrower that are CFCs or (ii) Equity Interests (or Equity Interests and Indebtedness) of one or more U.S. Subsidiaries of the Borrower that hold no material assets other than the assets described in clause (i).

"Governmental Authority" shall mean the government of the United States of America, Canada, any other, supranational authority (such as the European Union or the European Central Bank) or nation or any political subdivision thereof, whether state, provincial, territorial, municipal, 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.

"Guaranteed Creditors" shall mean and include (x) each of the Lender Creditors, (y) any Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the Closing Date or at the time it entered into a Bank Product with the Borrower or its Subsidiary and (z) any other Secured Creditor.

"Guarantor" shall mean and include Holdings, the Borrower (as it relates to Secured Bank Product Obligations) and each Subsidiary Guarantor. No Excluded Subsidiary shall be a Guarantor.

"Guaranty" shall mean, as to any Guarantor, the guarantees granted by such Guarantor pursuant to the terms of the Guaranty Agreement.

"Guaranty Agreement" shall have the meaning provided in Section 6.10.

"Hazardous Materials" shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, polychlorinated biphenyls, per- or polyfluoroalkyl substances and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous substances," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance regulated under any Environmental Law.

"Holdings" shall have the meaning (i) on or after the Closing Date, the entity specified in the preamble hereto or (ii) after the Closing Date, any other Person ("New Holdings") that is a direct or indirect parent of Holdings (or the previous New Holdings, as the case may be) ("Previous Holdings") and controlled by the Permitted Holders; *provided* that (a) New Holdings shall directly own 100% of the Equity Interests of the Borrower, (b) New Holdings shall expressly assume all the obligations of Previous Holdings under this Agreement and the other Credit Documents pursuant to a supplement hereto or thereto in form and substance reasonably satisfactory to the Administrative Agent, (c)(i) all capital stock of the Borrower and substantially all of the other assets of Previous Holdings shall be contributed or otherwise transferred, directly or indirectly, to New Holdings and pledged to secure the Obligations, (ii) all capital stock and all other assets of the Borrower and the Subsidiary Guarantors that constituted Collateral prior to such substitution shall remain Collateral and shall remain subject to Liens thereon securing the Obligations that are valid and enforceable to the same extent as such Liens were valid and enforceable prior to such substitution, and the priority and the perfection of such Liens shall be maintained at all times, and (iii) New Holdings shall enter into a Guaranty Agreement on substantially the same terms as the Guaranty Agreement of Previous Holdings, (d)(i) no Event of Default shall occur and be continuing at the time of such substitution and such substitution shall not result in any Event of Default and (ii) such substitution shall not result in any material adverse tax consequences in the aggregate, to the Lenders or, individually, to the Administrative Agent, (e) the Administrative Agent shall have received at least five (5) Business Days' prior written notice (or such shorter period as the Administrative Agent may agree in its reasonable discretion) of the proposed transaction and Previous Holdings, New Holdings and the Borrower shall promptly and in any event at least three (3) Business Days' prior to the consummation of the transaction provide all information any Lender or the Administrative Agent may reasonably request to satisfy its "know your customer" and other similar requirements necessary for such Person to comply with its internal compliance and regulatory requirements with respect to the proposed successor New Holdings, (f) New Holdings shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia or any other jurisdiction permitted by the Administrative Agent in its reasonable discretion, (g) if reasonably requested by the Administrative Agent, (i) the Credit Parties shall execute and deliver amendments, supplements and other modifications to all Credit Documents, instruments and agreements executed in connection therewith necessary to perfect and protect the liens and security interests in the Collateral of New Holdings and to give effect to the new Guaranty, in each case in form and substance substantially consistent with the instruments and agreements previously delivered in respect thereof or

reasonably satisfactory to the Administrative Agent; *provided* that, with the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned, delayed or denied), such amendments, supplements, modifications, instruments and/or agreements may be executed and delivered following such substitution and shall not constitute a condition to the effectiveness of New Holdings' substitution for Previous Holdings and (ii) the Credit Parties shall execute and deliver any documentation reasonably necessary to comply with the local law requirements of the applicable jurisdiction and (h) the Borrower shall deliver a certificate of a Responsible Officer with respect to the satisfaction of the conditions set forth in clauses (a), (c), (d)(i) and (h) of this definition; *provided*, *further*, that if each of the foregoing is satisfied, Previous Holdings shall be automatically released of all its obligations as "Holdings" under the Credit Documents and any reference to "Holdings" in the Credit Documents shall refer to New Holdings.

"Immaterial Subsidiary" shall mean any Restricted Subsidiary of the Borrower that, as of the end of the most recently ended Test Period, does not have, when taken together with all other Immaterial Subsidiaries, (a) assets in excess of 5.00% of Consolidated Total Assets; or (b) revenues for the period of four consecutive fiscal quarters ending on such date in excess of 5.00% of the combined revenues of the Borrower and the Restricted Subsidiaries for such period. For the avoidance of doubt, (x) at all times prior to the first delivery of financial statements pursuant to Section 9.01(a) or (b), this definition shall be applied based on the *pro forma* consolidated financial statements of the Borrower and its Subsidiaries delivered to the Administrative Agent prior to the date hereof and (y) any Subsidiary of the Borrower existing on the Closing Date that (1) is not a Guarantor on the Closing Date or (2) as of the Closing Date is not required to be a Guarantor pursuant to the requirements of Section 9.13, shall not, in each case, be deemed to be an "Immaterial Subsidiary" for purposes of the definition of "Excluded Subsidiary" and the requirements of Section 9.12.

"Increase Date" shall have the meaning provided in Section 2.15(b).

"Increase Loan Lender" shall have the meaning provided in Section 2.15(b).

"Incremental Revolving Commitment Amendment" shall have the meaning provided in Section 2.15(d).

"Indebtedness" shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers' acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi) or (vii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (*provided* that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all obligations under any Swap Contracts and any Bank Product Debt or under any similar type of agreement and (vii) all Off-Balance Sheet Liabilities of such Person. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (b) obligations, to the extent such obligations would otherwise constitute Indebtedness, under any agreement that has been defeased or satisfied and discharged pursuant to the terms of such agreement, (c) earn-outs and contingent payments in respect of acquisitions except to the extent that the liability on account of any such earn-outs or contingent payment has become fixed, due and payable for more than 10 Business Days without being paid and is required by U.S. GAAP to be reflected as a liability on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries or (d) obligations (including guarantees) in respect of any Floor Plan Financing (other than with respect to Section 10.12 or Section 11.04).

"Indemnified Person" shall have the meaning provided in Section 13.01(a).

"Indemnified Taxes" shall mean all (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Credit Document and (ii) to the extent not otherwise described in (i), Other Taxes.

"Independent Assets or Operations" shall mean, with respect to any Parent Company, that such Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown

on the most recent balance sheet of such Parent Company, is more than 5.00% of such Parent Company's corresponding consolidated amount.

"Initial Field Exam and Appraisal" shall mean a field examination and an inventory appraisal completed by one or more firms reasonably acceptable to the Administrative Agent (including, without limitation, the Administrative Agent's internal field examination group) (collectively, the "Examiner").

"Initial Lenders" shall have the meaning provided to such term in the Commitment Letter.

"Initial Maturity Date" shall mean the date that is five years after the Closing Date, or if such date is not a Business Day, the next preceding Business Day.

"Intellectual Property" shall have the meaning provided in Section 8.20.

"Intercompany Subordination Agreement" shall mean an intercompany subordination agreement, in substantially the form of Exhibit M hereto, or otherwise in form and substance reasonably satisfactory to the Administrative Agent.

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

"Interest Determination Date" shall mean the second Business Day prior to the commencement of any Interest Period relating to such Loan, unless market practice differs in the relevant interbank market for a currency, in which case the Interest Determination Date for that currency will be determined by the Administrative Agent in accordance with market practice in the relevant interbank market.

"Interest Period" shall mean, as to any Borrowing of a LIBO Rate Loan or CDOR Rate Loan, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two (in the case of CDOR Rate Loans only), three or, in the case of a LIBO Rate Loan only, six, or, if agreed to by all Lenders, twelve months or less than one month thereafter, as the Borrower may elect, or the date any Borrowing of a LIBO Rate Loan or CDOR Rate Loan is converted to a Borrowing of a Base Rate Loan in accordance with Section 2.08 or repaid or prepaid in accordance with Section 2.07 or Section 2.09; *provided* that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim Period" shall have the meaning assigned to such term in Section 10.11(b).

"Inventory" shall mean all "inventory," as such term is defined in the UCC as in effect on the date hereof in the State of New York, or, as applicable, in the PPSA, wherever located, in which any Person now or hereafter has rights, including, without limitation, all of each Credit Party's now owned or hereafter acquired Fleet Inventory and Parts Inventory.

"Investments" shall have the meaning provided in Section 10.05.

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

"Issuing Bank" shall mean, as the context may require, (a) each of the Revolving Lenders with a Letter of Credit Commitment set forth on Schedule 2.01, (b) any other Lender that may become an Issuing Bank pursuant to Sections 2.13(i) and 2.13(k), with respect to Letters of Credit issued by such Lender; or (c) collectively, all of the foregoing. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by affiliates or branches of such Issuing Bank (including without limitation with respect to

Letters of Credit with a co-applicant that is not a Credit Party), in which case the term "Issuing Bank" shall include any such affiliate or branch with respect to Letters of Credit issued by such affiliate or branch.

"Junior Representative" shall mean, with respect to any series of Permitted Junior Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Permitted Junior Debt is issued, incurred or otherwise obtained and each of their successors in such capacities.

"Landlord Lien Reserve" shall mean such reserves as may be established from time to time by the Administrative Agent in its Permitted Discretion with respect to leased locations or bailees of the Credit Parties where Eligible Fleet Inventory or Eligible Parts Inventory is located to the extent the Administrative Agent has not received a Landlord Lien Waiver and Access Agreement from the lessor or bailee at any such location; *provided* that such reserves for any location shall not exceed two (2) months' rent at such location.

"Landlord Lien Waiver and Access Agreement" shall mean a Landlord Lien Waiver and Access Agreement, in a form reasonably approved by the Administrative Agent.

"Latest Maturity Date" shall mean, at any time, the latest maturity date applicable to any Loan or Commitment hereunder as of such date of determination.

"Laws" shall mean collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"LC Collateral Account" shall mean a collateral account in the form of a deposit account established and maintained by the Administrative Agent for the benefit of the Secured Creditors, in accordance with the provisions of Section 2.13.

"LC Commitment" shall mean the commitment of each Issuing Bank to issue Letters of Credit pursuant to Section 2.13.

"LC Disbursement" shall mean a payment or disbursement made by any Issuing Bank pursuant to a Letter of Credit.

"LC Documents" shall mean all documents, instruments and agreements delivered by the Borrower or any Restricted Subsidiary of the Borrower that is a co-applicant in respect of any Letter of Credit to any Issuing Bank or the Administrative Agent in connection with any Letter of Credit.

"LC Exposure" shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

"LC Obligations" shall mean the sum (without duplication) of (a) all amounts owing by the Borrower for any drawings under Letters of Credit (including any bankers' acceptances or other payment obligations arising therefrom); and (b) the undrawn amount of all outstanding Letters of Credit.

"LC Participation Fee" shall have the meaning assigned to such term in Section 2.05(c)(i).

"LC Request" shall mean a request by the Borrower in accordance with the terms of Section 2.13(b) in form and substance reasonably satisfactory to the Issuing Bank.

"LCT Election" shall have the meaning provided in Section 1.05.

"LCT Test Date" shall have the meaning provided in Section 1.05.

"Lead Arrangers" shall mean BofA Securities, Inc., PNC Capital Markets LLC, Wells Fargo Bank, N.A., Citibank, N.A., Deutsche Bank Securities Inc., BMO Capital Markets Corp., Fifth Third Bank, National Association, Morgan Stanley Senior Funding, Inc., MUFG Union Bank, N.A., RBC Capital Markets, LLC, CIBC Bank USA and Stifel Nicolaus and Company, Incorporated, in their capacities as joint lead arrangers and/or joint bookrunners for this Agreement.

"Leased Parts Inventory" shall mean all now owned and hereafter acquired Inventory of the Credit Parties, which is used to support and in the maintenance and repair of Fleet Inventory, including brakes, gears, rope, tension rods, winches, augers, control assemblies, poll pullers, core barrels, utility buckets, and other parts, in each case, which has been denoted as leased parts on the general ledger account of the Borrower or such other Credit Party and leased to a customer of such Credit Party; *provided*, that in no event shall Leased Parts Inventory include Fleet Inventory or New Parts Inventory.

"Leases" shall mean the written agreements between a Credit Party and an Account Debtor entered into in the ordinary course of business of such Credit Party for rental or lease of Fleet Inventory or Leased Parts Inventory by such Credit Party to such Account Debtor, including all schedules and supplements thereto.

"Lender" shall mean each financial institution listed on Schedule 2.01, as well as any Person that becomes a "Lender" hereunder pursuant to Section 2.15, 3.04 or 13.04(b), and, as the context requires, includes the Swingline Lender.

"Lender Party" shall have the meaning provided in Section 12.15.

"Lender Creditors" shall mean the Agents, the Lenders and the Indemnified Persons.

"Letter of Credit" shall mean any letters of credit issued or to be issued by any Issuing Bank for the account of the Borrower (or any Restricted Subsidiary of the Borrower, with the Borrower as a co-applicant thereof) pursuant to Section 2.13 to the extent the provisions of Section 2.13 are applicable thereto and shall include the Existing Letters of Credit; *provided* that no Issuing Bank shall be obligated to issue any Letter of Credit other than standby letters of credit.

"Letter of Credit Commitment" shall mean, with respect to any Issuing Bank, the amount set forth opposite its name on Schedule 2.01 under the heading "LC Commitments."

"Letter of Credit Expiration Date" shall mean the date which is five (5) Business Days prior to the Maturity Date unless otherwise agreed by the Administrative Agent and the Issuing Bank.

"LIBO Rate" shall mean:

(a) for any Interest Period, with respect to any LIBO Rate Loan, the rate *per annum* equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated) (the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (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 approximately 11:00 a.m., London time determined two Business Days prior to such date for deposits in the relevant currency with a term of one month commencing that day;

provided that, subject to Section 3.05, 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, subject to Section 3.05, 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 and in no event in a manner less favorable than as applied to similarly situated borrowers in similar circumstances at such time. Notwithstanding any of the foregoing, the LIBO Rate shall not at any time be less than 0.00% *per annum*.

"LIBO Rate Loan" shall mean a Loan made by the Lenders to the Borrower which bears interest at a rate based on the LIBO Rate. LIBO Rate Loans may be denominated in Dollars or in an Alternative Currency (other than Canadian Dollars).

"LIBOR" shall have the meaning provided in the definition of "LIBO Rate."

"LIBOR Screen Rate" shall have the meaning provided in the definition of "LIBO Rate."

"LIBOR Successor Rate" shall have the meaning provided in Section 3.05.

"LIBOR Successor Rate Conforming Changes" shall mean, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of "Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of "Business Day," timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Credit Document).

"Lien" shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, deemed, documentary or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

"Limited Condition Transaction" shall mean any acquisition (including by way of merger or amalgamation) or similar Investment (including the assumption or incurrence of Indebtedness), the making of any Dividend and/or the making of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a); in each case, whose consummation is not conditioned on the availability of, or on obtaining, third party financing from a Person that is not an Affiliate of Holdings.

"Limited Originator Recourse" shall mean a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Entity under a Qualified Securitization Transaction, in each case, solely to the extent required to satisfy Standard Securitization Undertakings.

"Line Cap" shall mean an amount that is equal to the lesser of (a) the Revolving Commitments and (b) the then applicable Borrowing Base.

"Liquidity Event" shall mean the occurrence of a date when (a) Specified Excess Availability shall have been less than the greater of (i) 10.0% of the Line Cap and (ii) $56,000,000, in either case for five consecutive Business Days, until such date as (b) Specified Excess Availability shall have been at least equal to the greater of (i) 10.0% of the Line Cap and (ii) $56,000,000 for 30 consecutive calendar days.

"Liquidity Notice" shall mean a written notice delivered by the Administrative Agent at any time during a Liquidity Period to any bank or other depository at which any Deposit Account (other than any Excluded Account) is maintained directing such bank or other depository (a) to remit all funds in such Deposit Account to a Dominion Account, or in the case of a Dominion Account, to the Administrative Agent on a daily basis, (b) to cease following directions or instructions given to such bank or other depository by any Credit Party regarding the disbursement of funds from such Deposit Account (other than any Excluded Account), and (c) to follow all directions and instructions given to such bank or other depository by the Administrative Agent in each case, pursuant to the terms of any Deposit Account Control Agreement in place.

"Liquidity Period" shall mean any period throughout which (a) a Liquidity Event has occurred and is continuing or (b) a Specified Event of Default has occurred and is continuing.

"Loans" shall mean advances made to or at the instructions of the Borrower pursuant to Article 2 hereof and may constitute Revolving Loans, Swingline Loans or Overadvance Loans.

"Management Investor" shall mean any Person who is an officer or otherwise a member of management of the Borrower, any of its Subsidiaries or any of its direct or indirect parent companies on the Closing Date immediately after giving effect to the Acquisition or at any time thereafter.

"Margin Stock" shall have the meaning provided in Regulation U.

"Market Capitalization" shall mean an amount equal to (i) the total number of issued and outstanding shares of capital stock of the Borrower or any Parent Company on the date of declaration of the relevant dividend multiplied by (ii) the arithmetic mean of the closing prices per share of such capital stock on the New York Stock Exchange (or, if the primary listing of such capital stock is on another exchange, on such other exchange) for the 30 consecutive trading days immediately preceding the date of declaration of such dividend.

"Master Agreement" shall have the meaning provided to such term in the definition of "Swap Contract."

"Material Adverse Effect" shall mean (a) on the Closing Date, a Closing Date Material Adverse Effect, and (b) after the Closing Date, (i) a material adverse effect on the business, assets, financial condition or results of operations of the Credit Parties and their Restricted Subsidiaries taken as a whole, (ii) a material and adverse effect on the rights and remedies of the Administrative Agent and Collateral Agent, on behalf of the Lenders, taken as a whole, under the Credit Documents or (iii) a material and adverse effect on the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Documents.

"Maturity Date" shall mean the Initial Maturity Date or the Latest Maturity Date, as applicable.

"Minimum Equity Amount" shall have the meaning set forth in Section 6.06.

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Borrower or a Restricted Subsidiary of the Borrower has any obligation or liability, including on account of an ERISA Affiliate.

"Nesco Refinancing" shall mean the repayment in full (or the satisfaction and discharge in full of the obligations under any related indentures or notes, as applicable) of any outstanding indebtedness under (i) that certain credit agreement, dated as of July 31, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof), by and among Capitol Investment Merger Sub 2, LLC, the other entities party thereto and JPMorgan Chase Bank, N.A., as administrative agent, and (ii) that certain indenture, dated as of July 31, 2019 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Nesco Indenture"), by and among Capitol Investment Merger Sub 2, LLC, as issuer, Capitol Intermediate Holdings, LLC, as a guarantor, the other guarantors from time to time party thereto and Wilmington Trust, National Association, as trustee and notes collateral agent, pursuant to which Capitol Investment Merger Sub 2, LLC issued $475,000,000 aggregate principal amount of 10.000% senior secured notes due 2024, upon terms and subject to the provisions of the Existing Nesco Indenture.

"Net Book Value" shall mean, with respect to any Fleet Inventory, Cost *minus* accumulated depreciation for such Fleet Inventory calculated in accordance with U.S. GAAP.

"Net Orderly Liquidation Value" shall mean, with respect to Inventory owned by Credit Parties (other than Specified Floor Plan Companies) as of the date of the most recent Borrowing Base Certificate delivered hereunder, the orderly liquidation value thereof, net of all costs of liquidation thereof, as based upon the most recent Appraisal received by the Administrative Agent in accordance with Section 9.02 of this Agreement and, solely with respect to Parts Inventory, expressed as a percentage of book value of such Inventory.

"New Holdings" shall have the meaning provided in the definition of "Holdings."

"New Parts Inventory" shall mean all now owned and hereafter acquired Inventory of the Credit Parties, which is used to support and in the maintenance and repair of Fleet Inventory, including brakes, gears, rope, tension rods, winches, augers, control assemblies, poll pullers, core barrels, utility buckets and other parts; *provided*, that in no event shall New Parts Inventory include Fleet Inventory or Leased Parts Inventory.

"Non-Defaulting Lender" shall mean and include each Lender other than a Defaulting Lender.

"Note" shall mean each Revolving Note or Swingline Note, as applicable.

"Notice of Borrowing" shall mean a notice substantially in the form of the relevant notice attached as Exhibit A-1 hereto or, in the case of a Swingline Borrowing, Exhibit A-2 hereto.

"Notice of Conversion/Continuation" shall mean a notice substantially in the form of Exhibit A-3 hereto.

"Notice Office" shall mean the office of the Administrative Agent set forth in Schedule 13.03, or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"Noticed Hedge" shall mean any Secured Bank Product Obligations arising under a Swap Contract with respect to which the Borrower and the Secured Bank Product Provider thereof have notified the Administrative Agent of the intent to include such Secured Bank Product Obligations as a Noticed Hedge hereunder and with respect to which a Bank Products Reserve has subsequently been established in the maximum amount thereof.

"Obligations" shall mean (i) all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document, including, without limitation, all obligations to repay principal or interest on the Loans and Letters of Credit, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to any Credit Party or for which any Credit Party is liable as indemnitor under the Credit Documents, whether or not evidenced by any note or other instrument (in each case, including interest, fees, expenses and other amounts accruing during any case or proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such case or proceeding) and (ii) liabilities and indebtedness of the Borrower or any of its Restricted Subsidiaries owing under any Secured Bank Product Obligations (with respect to any Subsidiary Guarantor, other than any Excluded Swap Obligation of such Subsidiary Guarantor) entered into by the Borrower or any of its Restricted Subsidiaries, whether now in existence or hereafter arising. Notwithstanding anything to the contrary contained above, other than in connection with any application of proceeds pursuant to Section 11.11, (x) obligations of any Credit Party or Restricted Subsidiary under any Secured Bank Product Obligations shall be secured and guaranteed pursuant to the Credit Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (y) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Bank Product Obligations.

"Off-Balance Sheet Liabilities" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"Original Currency" shall have the meaning provided in Section 13.21.

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

"Other Currency" shall have the meaning provided in Section 13.21.

"Other Taxes" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.04).

"Outstanding Amount" shall mean, with respect to Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"Overadvance" shall have the meaning provided in Section 2.17.

"Overadvance Loan" shall mean a Base Rate Loan made when an Overadvance exists or is caused by the funding thereof.

"Parent Company" shall mean any direct or indirect parent company of the Borrower (other than Platinum or any other Permitted Holder).

"Participant" shall have the meaning provided in Section 13.04(c).

"Participant Register" shall have the meaning provided in Section 13.04(c).

"Participating Member State" shall mean any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Parts Inventory" shall mean all Leased Parts Inventory and all New Parts Inventory.

"Patent Security Agreement" shall have the meaning provided in the U.S. Security Agreement and/or the Canadian Security Agreement, as applicable.

"Patriot Act" shall have the meaning provided in Section 13.16.

"Payment Conditions" shall mean as to any relevant action contemplated in this Agreement, (i) no Event of Default has then occurred and is continuing or would immediately result from any applicable action, (ii) (a) Specified Excess Availability on a Pro Forma Basis immediately after giving effect to such action would be at least the greater of (x) 12.5% of the Line Cap and (y) $75,000,000 and (b) over the 30 consecutive days prior to consummation of such action, Specified Excess Availability averaged no less than the greater of (x) 12.5% of the Line Cap and (y) $75,000,000, on a Pro Forma Basis for such action and (iii) if (a) Specified Excess Availability on a Pro Forma Basis immediately after giving effect to such action is less than 25% of the Revolving Commitments or (b) over the 30 consecutive days prior to consummation of such action, Specified Excess Availability averaged less than 25% of the Revolving Commitments on a Pro Forma Basis for such action, the Consolidated Fixed Charge Coverage Ratio would be at least 1.00 to 1.00 on a Pro Forma Basis for such action.

"Payment Office" shall mean the office of the Administrative Agent set forth on Schedule 13.03 or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Perfection Certificate" shall have the meaning provided in the U.S. Security Agreement and/or the Canadian Security Agreement, as applicable.

"Permitted Acquisition" shall mean the acquisition by the Borrower or any of its Restricted Subsidiaries of an Acquired Entity or Business; *provided* that (i) the Acquired Entity or Business acquired is in a business permitted by Section 10.09 and (ii) all applicable requirements of Section 9.14 are satisfied.

"Permitted Borrowing Base Liens" shall mean Liens on the Collateral permitted by Sections 10.01(i), (ii), (xi), (xii), (xxiii) and (xxv) ((x)in the case of clauses (ii), (xi) and (xxiii), subject to compliance with clauses (c) and (d) of the definition of "Eligible Inventory," (y) in the case of clause (xxv), such Lien does not secure any Indebtedness for borrowed money and only secures obligations in respect of customary fees owing to the applicable depositary bank with respect to accounts in which Eligible Cash is maintained and (z) in each case, solely to the extent any such Lien set forth in clause (ii), (xi), (xii) or (xxiii) arises by operation of law).

"Permitted Discretion" shall mean reasonable credit judgment made in good faith in accordance with customary business practices for comparable asset-based lending transactions, and as it relates to the establishment or adjustment of Reserves (or the modification of eligibility standards and criteria) shall require that (a) such establishment, adjustment or imposition after the Closing Date Borrowing Base Termination Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date Borrowing Base Termination Date or are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date Borrowing Base Termination Date, unless the Borrower and the Administrative Agent otherwise agree in writing (for the avoidance of doubt, it is understood that such Reserves may be established after the Closing Date Borrowing Base Termination Date pursuant to the terms of Section 9.17), (b) the contributing factors to the imposition of any Reserves shall not duplicate the exclusionary criteria set forth in the definitions of Eligible Accounts, Eligible Inventory, Eligible Fleet Inventory, Eligible Leased Parts Inventory or Eligible New Parts Inventory, as applicable, and vice versa and (c) the amount of any such Reserve so established or the effect of any adjustment shall be a reasonable quantification (as reasonably determined by the Administrative Agent) of the incremental Dilution of the Borrowing Base attributable to such contributing factors.

"Permitted Encumbrances" shall mean, with respect to any Real Property, such exceptions to title as are set forth in the mortgage title insurance policy delivered with respect thereto.

"Permitted Holders" shall mean (i) Platinum, (ii) any Related Party of Platinum or any other Existing Investors, (iii) Management Investors, (iv) Existing Investors and (v) any "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided* that in the case of such "group" and without giving effect to the existence of such "group" or any other "group," such Persons specified in clauses (i) through (iv) above, collectively, have beneficial ownership, directly or indirectly, of more than 50% of the total voting power of the voting stock of the Borrower or any of its direct or indirect parent entities held by such "group."

"Permitted Investment" shall have the meaning provided in Section 10.05.

"Permitted Junior Debt" shall mean any Permitted Junior Notes and any Permitted Junior Loans.

"Permitted Junior Debt Documents" shall mean any Permitted Junior Notes Documents and the Permitted Junior Loan Documents.

"Permitted Junior Loan Documents" shall mean, after the execution and delivery thereof, each agreement, document or instrument relating to the incurrence of Permitted Junior Loans, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

"Permitted Junior Loans" shall mean any Indebtedness of the Borrower or any Restricted Subsidiary in the form of unsecured or secured loans; *provided* that (i) except as provided in clause (v) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be secured by any asset of the Borrower or any of its Subsidiaries, (ii) no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than Holdings, the Borrower or a Subsidiary Guarantor, (iii) no such Indebtedness shall

be subject to scheduled amortization or have a final stated maturity (excluding for this purpose, interim loan financings that provide for automatic rollover, subject to customary conditions, to Indebtedness otherwise meeting the maturity requirements of this clause (iii)), in either case, except any Permitted Refinancing Indebtedness incurred with respect to the foregoing to the extent such Indebtedness does not otherwise meet the requirements set forth in this clause (iii), prior to the date occurring ninety-one (91) days following the Latest Maturity Date as of the date such Indebtedness was incurred or shall have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for any other Revolving Loans then outstanding, (iv) [reserved], (v) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured only by assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of any Credit Party other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are necessary to reflect the differing lien priorities and otherwise reasonably satisfactory to the Collateral Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Intercreditor Agreement, and (vi) the other terms and conditions (excluding pricing and optional prepayment or redemption terms), taken as a whole, contained in the agreement governing such Indebtedness shall not be materially more favorable to the lenders of the Permitted Junior Loans than those with respect to this Agreement; *provided* that (x) any such terms may be materially more favorable to the extent they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred and (y) in the event that any agreement evidencing such Indebtedness contains financial maintenance covenants that are effective prior to the Latest Maturity Date as of the date such Indebtedness was incurred, the Borrower shall have offered in good faith to enter into an amendment to this Agreement to add any such financial covenants as are not then contained in this Agreement (*provided* that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

"Permitted Junior Notes" shall mean any Indebtedness of the Borrower or any Restricted Subsidiary evidenced by a note security and incurred pursuant to one or more issuances of such notes; *provided* that (i) except as provided in clause (vi) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than Holdings, the Borrower or any Subsidiary Guarantor or shall be secured by any asset of the Borrower or any of its Subsidiaries, (ii) no such Indebtedness shall be subject to scheduled amortization or have a final stated maturity, in either case, prior to the date occurring ninety-one (91) days following the Latest Maturity Date as of the date such Indebtedness was incurred, or have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for any other Revolving Loans then outstanding, (iii) [reserved], (iv) the indenture governing such Indebtedness shall not include any financial maintenance covenants, (v) the "default to other indebtedness" event of default contained in the indenture governing such Indebtedness shall provide for a "cross-acceleration" or a "cross-acceleration" and "cross-payment default" rather than a "cross-default," (vi) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured only by assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Borrower or any of its Subsidiaries other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are necessary to reflect the differing lien priorities and otherwise reasonably satisfactory to the Collateral Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Intercreditor Agreement, and (vii) the other terms and conditions (excluding pricing and optional prepayment or redemption terms), taken as a whole, contained in the indenture governing such Indebtedness shall not be materially more favorable to the holders of the Permitted Junior Notes than those with respect to this Agreement; *provided* that any such terms may be materially more favorable to the extent they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred (*provided* that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vii), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

"Permitted Junior Notes Documents" shall mean, after the execution and delivery thereof, each Permitted Junior Notes Indenture, and the Permitted Junior Notes, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

"Permitted Junior Notes Indenture" shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Junior Notes, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

"Permitted Liens" shall have the meaning provided in Section 10.01.

"Permitted Refinancing Indebtedness" shall mean Indebtedness incurred by the Borrower or any Restricted Subsidiary which serves to extend, replace, refund, refinance, renew or defease ("Refinance") any Indebtedness, including any previously issued Permitted Refinancing Indebtedness, so long as:

(1) the principal amount of such new Indebtedness does not exceed (a) the principal amount of Indebtedness (including any unused commitments therefor that are able to be drawn at such time) being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, the "Refinanced Debt"), *plus* (b) any accrued and unpaid interest and fees on such Refinanced Debt, *plus* (c) the amount of any tender or redemption premium paid thereon or any penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any costs, fees and expenses incurred in connection with the issuance of such new Indebtedness and the Refinancing of such Refinanced Debt;

(2) such Permitted Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Permitted 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 as of the date such Indebtedness was incurred);

(3) to the extent such Permitted Refinancing Indebtedness refinances (a) Indebtedness that is expressly subordinated in right of payment to the Obligations (other than Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), such Permitted Refinancing Indebtedness is subordinated to the Obligations on terms that are, taken as a whole, not materially less favorable to the Lenders than the subordination terms applicable to the Refinanced Debt, (b) secured by Liens that are subordinated to the Liens securing the Obligations, such Permitted Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Obligations on terms that are, taken as a whole, not materially less favorable to the Lenders than the Lien subordination terms applicable to the Refinanced Debt or (c) secured by Liens that are *pari passu* with the Liens securing the Obligations, such Permitted Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are *pari passu* or subordinated to the Liens that secure the Obligations on terms that are, taken as a whole, not materially less favorable to the Lenders than the Collateral sharing provisions applicable to the Refinanced Debt; and

(4) subject to Section 10.01(vi), such Permitted Refinancing Indebtedness shall not be secured by any assets or property of the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (*plus* improvements and accessions thereon and proceeds in respect thereof);

provided that (a) Permitted Refinancing Indebtedness will not include Indebtedness of a Restricted Subsidiary of the Borrower that is not a Subsidiary Guarantor that refinances Indebtedness of a Subsidiary Guarantor and (b) clause (2) of this definition will not apply to any Refinancing of any Indebtedness under clause (iii) or (v) of Section 10.04.

"Permitted Restricted Cash" shall mean cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries that is subject to no Liens other than (i) nonconsensual Liens permitted by Section 10.01 and (ii) Liens in favor of or pursuant to (x) any Credit Document or any Secured Notes Document and (y) any Permitted Junior Debt Document and any Permitted Junior Notes, in the case of this clause (y), to the extent such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis.

"Person" shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, unlimited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Plan" shall mean any pension plan as defined in Section 3(2) of ERISA other than a Canadian Pension Plan or a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Borrower or a Restricted Subsidiary of the Borrower or with respect to which the Borrower or a Restricted Subsidiary of the Borrower has, or may have, any liability, including, for greater certainty, liability arising from an ERISA Affiliate.

"Plan of Reorganization" shall mean any plan of reorganization, liquidation, compromise, arrangement, adjustment or composition or any proposal or other similar dispositive restructuring plan pursuant to any Debtor Relief Laws.

"Platform" shall mean Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Platinum" shall mean Platinum Equity Advisors, LLC and its Affiliates (excluding any operating portfolio company thereof).

"Pledged Collateral" shall have the meaning assigned to such term in the U.S. Security Agreement and/or the Canadian Security Agreement, as applicable.

"PPSA" shall mean the Personal Property Security Act (Alberta) and the regulations thereunder; *provided*, *however*, if validity, perfection and effect of perfection and non-perfection of the Collateral Agent's Liens on any applicable Collateral are governed by the personal property security laws or other applicable laws of any jurisdiction in Canada other than Alberta, PPSA shall mean those personal property security laws or such other applicable laws (including the Civil Code of Quebec) in effect from time to time in such other jurisdiction for the purposes of the provisions hereof relating to such validity, perfection and effect of perfection and non-perfection and for the definitions related to such provisions, as from time to time in effect.

"Previous Holdings" shall have the meaning provided in the definition of "Holdings."

"Pre-Adjustment Successor Rate" shall have the meaning provided in Section 3.05(c).

"Prime Rate" shall mean the rate publicly announced from time to time by the Administrative Agent as its "prime rate," such "prime rate" to change when and as such prime lending rate changes. The Prime Rate is set by the Administrative Agent based upon various factors including 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 public announcement of such change.

"Pro Forma Basis" shall mean, with respect to the calculation of any test, financial ratio, basket or covenant under this Agreement, including the Consolidated Total Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio and the calculation of Consolidated Total Assets, Consolidated EBITDA and Availability, of any Person and its Restricted Subsidiaries, as of any date, that *pro forma* effect will be given to the Transaction, any acquisition, merger, amalgamation, consolidation, Investment, any issuance, incurrence, assumption or repayment or redemption of Indebtedness (including Indebtedness issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated) (but excluding the identifiable proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions for purposes of netting cash to calculate the applicable ratio), any issuance or redemption of preferred stock or Disqualified Stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of such Person being used to calculate such test, financial ratio, basket or covenant (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary of the subject Person or was merged, amalgamated or consolidated with or into the subject Person or any other Restricted Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

For purposes of making any computation referred to above:

(1) if any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Swap Contract applicable to such Indebtedness if such Swap Contract has a remaining term in excess of 12 months);

(2) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with U.S. GAAP;

(3) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower may designate;

(4) interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; and

(5) to the extent not already covered above, any such calculation may include adjustments calculated in accordance with Regulation S-X under the Securities Act.

Any *pro forma* calculation may include, without limitation, adjustments calculated to give effect to any Pro Forma Cost Savings; *provided* that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition of "Pro Forma Cost Savings" or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of "Pro Forma Cost Savings."

"Pro Forma Cost Savings" shall mean, without duplication of any amounts referenced in the definition of "Pro Forma Basis," an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a *pro forma* basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Borrower (or any successor thereto) or any Restricted Subsidiary within 24 months of, the date of such *pro forma* calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such action; *provided* that (a) such cost savings, expense reductions, operating improvements and synergies are reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Borrower, any direct or indirect parent of the Borrower or any Qualified Reporting Subsidiary (or any successor thereto)) and are reasonably anticipated to be realized within 24 months after the date of such *pro forma* calculation or after the consummation of any change that is expected to result in such cost savings, operating expense reductions, operating improvements or synergies, (b) the aggregate amount added in respect of this definition of "Pro Forma Cost Savings" shall not exceed with respect to any four quarter period, 25% of Consolidated EBITDA for such period (calculated after giving effect to any giving effect to any such adjustments) and (c) no cost savings, expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period.

"Pro Forma Financial Statements" shall have the meaning provided in Section 6.11.

"Pro Rata Percentage" of any Lender at any time shall mean the percentage of the total Revolving Commitments represented by such Lender's Revolving Commitment.

"Pro Rata Share" shall mean, with respect to each Lender at any time, either (i) a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Aggregate Exposure of such Lender at such time and the denominator of which is the aggregate amount of all Aggregate Exposures at such time, and (ii) a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Exposure of such Lender at such time and the denominator of which is the aggregate amount of all Revolving Exposures at such time. The initial Pro Rata Shares of each Lender are set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Projections" shall mean the detailed projected consolidated financial statements of the Borrower and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Closing Date.

"Properly Contested" shall mean with respect to any obligation of a Credit Party, (a) the obligation is subject to a bona fide dispute regarding amount or the Credit Party's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with U.S. GAAP; (d) non-payment would not have a Material Adverse Effect, nor result in forfeiture or sale of any assets of the Credit Party; (e) no Lien is imposed on assets of the Credit Party, unless bonded and stayed to the reasonable satisfaction of Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

"Protective Advances" shall have the meaning provided in Section 2.18.

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

"Public Company Costs" shall mean as to any Person, costs relating to compliance with the provisions of the U.S. Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, as applicable to companies with equity securities held by the public, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, the rules of national securities exchange companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising solely by virtue of listing of such Person's equity securities on a national securities exchange.

"Public-Sider" shall mean a Lender whose representatives may trade in securities of the Borrower or its controlling Person or any of its Subsidiaries while in possession of the financial statements provided by the Borrower under the terms of this Agreement.

"QFC Credit Support" shall have the meaning provided in Section 13.25(a).

"Qualified Preferred Stock" shall mean any preferred capital stock of Holdings or the Borrower so long as the terms of any such preferred capital stock (x) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision prior to the 91st day after the Latest Maturity Date as of the date such Qualified Preferred Stock was issued other than (i) provisions requiring payment solely (or with provisions permitting Holdings or the Borrower, as applicable, to opt to make payment solely) in the form of common Equity Interests or Qualified Preferred Stock of Holdings or the Borrower or cash in lieu of fractional shares, as applicable, or any Equity Interests of any direct or indirect Parent Company of Holdings or the Borrower, as applicable, (ii) provisions requiring payment solely as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the payment in full of all Obligations in cash (other than unasserted contingent indemnification obligations) or such payment is otherwise permitted by this Agreement (including as a result of a waiver or amendment hereunder) and (iii) with respect to preferred capital stock issued to any plan for the benefit of employees of Holdings or the Borrower, as applicable, or its Subsidiaries or by any such plan to such employees, provisions requiring the repurchase thereof in order to satisfy applicable statutory or regulatory obligations and (y) give Holdings or the Borrower the option to elect to pay such dividends or distributions on a non-cash basis or otherwise do not require the cash payment of dividends or distributions at any time that such cash payment is not permitted under this Agreement or would result in an Event of Default hereunder.

"Qualified Reporting Subsidiary" shall have the meaning provided in Section 9.01(c).

"Qualified Securitization Transaction" shall mean any Securitization Transaction of a Securitization Entity that meets the following conditions:

(1) the board of directors of the Borrower or the applicable Restricted Subsidiary shall have determined in good faith that such Qualified Securitization Transaction (including financing terms, covenants, termination events or other provisions) is in the aggregate economically fair and reasonable to the Borrower or the applicable Restricted Subsidiary;

(2) all sales of accounts receivable and related assets to the Securitization Entity are made at fair market value (as determined in good faith by the Borrower or the applicable Restricted Subsidiary) and may include Standard Securitization Undertakings; and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings and Limited Originator Recourse.

Notwithstanding anything to the contrary, the grant of a security interest in any accounts receivable of any Credit Party to secure Indebtedness or other obligations under this Agreement or the Secured Notes Indenture shall not be deemed a Qualified Securitization Transaction.

"Real Property" of any Person shall mean, collectively, the right, title and interest (including heritable interest) of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles or intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"Receivables Assets" shall mean (a) any accounts receivable and the proceeds thereof owed to a Borrower or a Restricted Subsidiary subject to a Receivables Facility and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with an accounts receivable factoring arrangement and which are, in each case, sold, conveyed, assigned or otherwise transferred or pledged by a Borrower or a Restricted Subsidiary to a commercial bank in connection with a Receivables Facility; *provided* that no asset included in the Borrowing Base shall constitute a Receivables Asset.

"Receivables Facility" shall mean an agreement between the Borrower or a Restricted Subsidiary and a commercial bank that is entered into at the request of a customer of the Borrower or a Restricted Subsidiary, pursuant to which (a) the Borrower or such Restricted Subsidiary, as applicable, agrees to sell to such commercial bank accounts receivable owing by such customer, together with Receivables Assets related thereto, at a maximum discount, for each such account receivable, not to exceed 5.0% of the face value thereof, and (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to the Borrower and such Restricted Subsidiary.

"Recipient" shall mean the Administrative Agent, any Lender and any Issuing Bank.

"Recovery Event" shall mean the receipt by the Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation or expropriation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Borrower or any of its Restricted Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 9.03, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Borrower or any of its Restricted Subsidiaries in respect of any such event.

"Reference Period" shall have the meaning provided in the definition of the term "Pro Forma Basis."

"Refinanced Debt" shall have the meaning provided in the definition of the term "Permitted Refinancing Indebtedness."

"Refinancing" shall mean the Nesco Refinancing and the Target Refinancing.

"Register" shall have the meaning provided in Section 13.04(b)(iv).

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Regulation X" shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Related Adjustment" shall mean, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:

(A) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or

(B) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).

"Related Party" shall mean (a) with respect to Platinum Equity Advisors, LLC and the Existing Investors, (i) any investment fund controlled by or under common control with Platinum Equity Advisors, LLC or the Existing Investors, any officer or director of the foregoing Persons, or any entity controlled by any of the foregoing Persons and (ii) any spouse or lineal descendant (including by adoption or stepchildren) of the officers and directors referred to in clause (a)(i); (b) with respect to any officer of the Borrower or its Subsidiaries, (i) any spouse or lineal descendant (including by adoption and stepchildren) of such officer and (ii) any trust, corporation or partnership or other entity, in each case to the extent not an operating company, of which an 80% or more controlling interest is held by the beneficiaries, stockholders, partners or owners who are the officer, any of the Persons described in clause (b)(i) above or any combination of these identified relationships; and (c) with respect to any Agent, such Agent's Affiliates and branches and the respective directors, officers, employees, agents and advisors of such Agent and such Agent's Affiliates and branches.

"Release" shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping or migrating, of any Hazardous Material into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

"Relevant Governmental Body" shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

"Rental Equipment" shall mean utility equipment, vehicles and other equipment that is determined in the good faith of the Borrower to be held for the purpose of renting such equipment and vehicles to customers of the Borrower and its Subsidiaries.

"Replaced Lender" shall have the meaning provided in Section 3.04.

"Replacement Lender" shall have the meaning provided in Section 3.04.

"Reporting Extension Provision" shall have the meaning specified in Section 9.01.

"Required Lenders" shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Commitments as of any date of determination represents greater than 50% of the sum of all outstanding principal of Commitments of Non-Defaulting Lenders at such time.

"Requirement of Law" or "Requirements of Law" shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty,

rule, regulation, order, official administrative pronouncement, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Rescindable Amount" shall have the meaning provided in Section 2.10(d).

"Reserves" shall mean, without duplication of any items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent, from time to time determines in its Permitted Discretion, including but not limited to reserves against Availability, Eligible Accounts, Eligible Parts Inventory and Eligible Fleet Inventory, Dilution Reserves, the Canadian Priority Payables Reserve and Landlord Lien Reserves, *plus* any Bank Product Reserves.

Notwithstanding the foregoing or anything contrary in this Agreement, (a) no Reserves shall be established or changed and no modifications to eligibility criteria or standards made, in each case, except upon not less than three (3) Business Days' prior written notice to the Borrower, which notice shall include a reasonably detailed description of such Reserve being established or the modification to eligibility criteria or standards being made (during which period (i) the Administrative Agent shall, if requested, discuss any such Reserve, change or modification with the Borrower, (ii) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve, change or modification thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change or modification thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent and (iii) no Credit Extensions shall be made to the Borrower if after giving effect to such Credit Extension the Availability Conditions would not be met after taking into account such Reserves), *provided* that no Landlord Lien Reserves may be established prior to the date that is 120 days after the Closing Date, (b) no Reserves shall be established with respect to any surety or performance bond in which guarantees, letters of credit, bonds or similar arrangements are issued to facilitate the Credit Parties' business, except to the extent (i) any assets included in the Borrowing Base are subject to a perfected Lien securing reimbursement obligations in respect of such surety or performance bond and such Liens are *pari passu* or senior to the Liens securing the Obligations hereunder or (ii) the counterparties to any such surety bond have made demands for cash collateral which have not been satisfied, (c) the amount of any Reserve established by the Administrative Agent, and any change in the amount of any Reserve and any modification to eligibility criteria and standards, shall have a direct and reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change and (d) no Reserve shall be established to the extent that such Reserve would be duplicative of any specific item excluded as ineligible in the definitions of "Eligible Account," "Eligible Inventory," "Eligible Fleet Inventory," "Eligible Leased Parts Inventory" or "Eligible New Parts Inventory" or of any then-existing Reserve, reserves or criteria deducted in computing Cost, market value, Net Book Value or the Net Orderly Liquidation Value of any of the foregoing or constitute a general Reserve applicable to all Inventory or Accounts that is the functional equivalent of a decrease in advance rates. Notwithstanding clause (i) of the preceding sentence, changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period, it being understood that no Default or Event of Default shall be deemed to result therefrom, if applicable, for a period of six (6) Business Days.

"Resolution Authority" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" shall mean, with respect to any Person, its chief financial officer, chief executive officer, president, or any vice president, managing director, director, company secretary, treasurer or assistant treasurer, controller, secretary or assistant secretary, or other officer of such Person having substantially the same authority and responsibility and, solely for purposes of notices given pursuant to Article 2, any other officer or employee of the applicable Credit Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Credit Party designated in or pursuant to an agreement between the applicable Credit Party and the Administrative Agent; *provided* that, with respect to compliance with financial covenants, "Responsible Officer" shall mean the chief financial officer, treasurer or controller of the Borrower, or any other officer of the Borrower having substantially the same authority and responsibility. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"Restricted Subsidiary" shall mean each Subsidiary of the Borrower other than any Unrestricted Subsidiary. Any Subsidiary Borrowers and the Subsidiary Guarantors shall at all times constitute Restricted Subsidiaries.

"Returns" shall have the meaning provided in Section 8.09.

"Revaluation Date" shall mean (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Loan denominated in an Alternative Currency, (ii) each date of a continuation of a LIBO Rate Loan or CDOR Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, (iii) for purposes of calculating the Unused Line Fee, the last day of any fiscal quarter and (iv) such additional dates as the Administrative Agent shall determine or require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the applicable Issuing Bank under any Letter of Credit denominated in an Alternative Currency and (iv) for purposes of calculating the Unused Line Fee, the LC Participation Fee and the Fronting Fee, the last day of any fiscal quarter; and (c) if required by the Administrative Agent or the Required Lenders, any date on which the Dollar Equivalent of the Outstanding Amount, as recalculated based on the exchange rate therefor quoted in the Wall Street Journal on the respective date of determination pursuant to this exception, would result in an increase in the Dollar Equivalent of such Outstanding Amount by 10% or more since the most recent prior Revaluation Date.

"Revolving Availability Period" shall mean the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

"Revolving Borrowing" shall mean a Borrowing comprised of Revolving Loans.

"Revolving Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder up to the amount set forth and opposite such Lender's name on Schedule 2.01 under the caption "Revolving Commitment," or in the Assignment and Assumption pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 13.04. The aggregate amount of the Lenders' Revolving Commitments on the Closing Date is $750,000,000.

"Revolving Commitment Increase" shall have the meaning provided in Section 2.15(a).

"Revolving Commitment Increase Notice" shall have the meaning provided in Section 2.15(b).

"Revolving Exposure" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's LC Exposure.

"Revolving Lender" shall mean a Lender with a Revolving Commitment.

"Revolving Loans" shall mean advances made pursuant to Section 2 hereof.

"Revolving Note" shall mean each revolving note substantially in the form of Exhibit B hereto.

"Rollover Financing" shall have the meaning provided in Section 6.06.

"Rollover Investors" shall have the meaning assigned to the term "Rollover Holders" in the Acquisition Agreement.

"S&P" shall mean S&P Global Ratings, a division of S&P Global Inc., and any successor owner of such division.

"Sale-Leaseback Transaction" shall mean any arrangements with any Person providing for the leasing by the Borrower or any of its Restricted Subsidiaries of real or personal property which has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

"Sanctioned Country" shall mean a country, region or territory that at any time is the subject or target of any comprehensive territorial Sanctions (as of the Closing Date, the Crimea region of the Ukraine, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the Government of Canada

or by the United Nations Security Council, the European Union or any European Union member state or Her Majesty's Treasury of the United Kingdom, (b) any Person organized or resident in a Sanctioned Country or (c) any Person subject to Sanctions as a result of being owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b).

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the Government of Canada, the United Nations Security Council, the European Union or any European Union member state.

"Scheduled Unavailability Date" shall have the meaning provided in Section 3.05(c).

"SEC" shall have the meaning provided in Section 9.01(g).

"Section 9.01 Financials" shall mean the annual and quarterly financial statements required to be delivered pursuant to Sections 9.01(a) and (b).

"Section 9.01 Reporting Deadline" shall have the meaning provided in Section 9.01(c).

"Secured Bank Product Obligations" shall mean Bank Product Debt owing to a Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the Closing Date or at the time it entered into a Bank Product with the Borrower or its Restricted Subsidiary, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates and branches) specified by such provider in writing to the Administrative Agent, which amount may be established or increased (by further written notice by the Borrower or such provider to the Administrative Agent from time to time) as long as no Default or Event of Default then exists and no Overadvance would result from establishment of a Bank Product Reserve for such amount and all other Secured Bank Product Obligations.

"Secured Bank Product Provider" shall mean, at the time of entry into a Bank Product with the Borrower or its Subsidiary (or, if such Bank Product exists on the Closing Date, as of the Closing Date) the Administrative Agent, any Lender or any of their respective Affiliates or branches that is providing a Bank Product; *provided* such provider delivers written notice to the Administrative Agent, substantially in the form of Exhibit D hereto, by the later of ten (10) days following (x) the Closing Date and (y) creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by Section 12.12.

"Secured Creditors" shall have the meaning assigned that term in the respective Security Documents, but including in any event (and for all purposes under the Credit Documents) any branch or affiliate of a Lender who makes Loans on behalf of such Lender pursuant to Section 2.02(b).

"Secured Notes" shall mean the senior secured second lien notes issued under the Secured Notes Indenture.

"Secured Notes Agent" shall mean, Wilmington Trust, National Association, as trustee and notes collateral agent under the Secured Notes Indenture.

"Secured Notes Documents" shall mean the Secured Notes Indenture, the "Security Documents" as such term is defined in the Secured Notes Indenture and all other documents executed and delivered with respect to the Secured Notes or the Secured Notes Indenture, as the same may be amended, restated, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof.

"Secured Notes Indenture" shall mean that certain Indenture, dated as of the Closing Date (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Holdings, the Borrower, the other guarantors party thereto and the Secured Notes Agent, pursuant to which $920,000,000 aggregate principal amount of 5.500% senior secured second lien notes due 2029 were issued.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Securities Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Securitization Assets" shall mean (a) the accounts receivable subject to a Securitization Transaction and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guaranties or other obligations in respect of such accounts receivable, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred (or in respect of which security interests are customarily granted), together with accounts receivable in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by the Borrower or any Restricted Subsidiary to a Securitization Entity in connection with a Securitization Transaction; provided that no asset included in the Borrowing Base shall constitute a Securitization Asset.

"Securitization Entity" shall mean a Wholly-Owned Restricted Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Transaction with the Borrower in which the Borrower or any Restricted Subsidiary of the Borrower makes an Investment and to which the Borrower or any Restricted Subsidiary of the Borrower transfers Securitization Assets) that is designated by the governing body of the Borrower (as provided below) as a Securitization Entity and engages in no activities other than in connection with the financing of Securitization Assets and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (a) is guaranteed by the Borrower or any of its Subsidiaries (other than the Securitization Entity) (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (b) is recourse to or obligates the Borrower or any of its Subsidiaries (other than the Securitization Entity) in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (c) subjects any asset of the Borrower or any of its Subsidiaries (other than the Securitization Entity), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse;

(2) with which neither the Borrower nor any of its Subsidiaries has any material contract, agreement, arrangement or understanding other than on terms not materially less favorable to the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(3) to which neither the Borrower nor any of its Subsidiaries has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

"Securitization Fees" shall mean 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 Entity in connection with any Qualified Securitization Transaction or a Receivables Facility.

"Securitization Repurchase Obligation" shall mean any obligation of a seller of receivables in a Qualified Securitization Transaction or a Receivables Facility, as applicable, to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"Securitization Transaction" shall mean any transaction or series of transactions that may be entered into by the Borrower, any of its Restricted Subsidiaries or a Securitization Entity pursuant to which the Borrower, such Restricted Subsidiary or such Securitization Entity may sell, convey or otherwise transfer to, or grant a security interest in for the benefit of, (1) a Securitization Entity, the Borrower or any of its Restricted Subsidiaries which subsequently transfers to a Securitization Entity (in the case of a transfer by the Borrower or such Restricted Subsidiary) and (2) any other Person (in the case of transfer by a Securitization Entity), any accounts receivable (whether now existing or arising or acquired in the future) of the Borrower or any of its Restricted Subsidiaries which arose in the ordinary course of business of the Borrower or such Restricted Subsidiary, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets (including contract rights) which are customarily transferred or in respect of which

security interests are customarily granted in connection with asset securitization transactions involving accounts receivable (other than any assets included in the Borrowing Base).

"Security Documents" shall mean each U.S. Security Document, each Canadian Security Document, each Deposit Account Control Agreement, and, after the execution and delivery thereof, each Additional Security Document.

"Settlement Date" shall have the meaning provided in Section 2.14(b).

"Similar Business" shall mean any business and any services, activities or businesses incidental, or reasonably related or similar to, complementary or corollary to any line of business engaged in by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) or any business activity that is a reasonable extension, development or expansion thereof or ancillary thereto.

"SOFR" with respect to any Business Day shall mean the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.

"Solvent" and "Solvency" shall mean, with respect to any Person on any date of determination, that on such date (i) the fair value of the assets of such Person and its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries, on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability); (ii) the present fair saleable value of the assets of such Person and its Subsidiaries, on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries, on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability); (iii) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (including, without limitation, contingent and subordinated liabilities) as they become absolute and mature in the ordinary course of business on their respective stated maturities and are otherwise "solvent" within the meaning given that term and similar terms under Debtor Relief Laws or applicable laws relating to fraudulent transfers and conveyances (or, as regards a Canadian Credit Party, is not an "insolvent person" as defined in the *Bankruptcy and Insolvency Act* (Canada)); and (iv) such Person and its Subsidiaries on a consolidated basis have, and will have, adequate capital with which to conduct the business they are presently conducting and reasonably anticipate conducting.

"Specified Equity Contribution" shall have the meaning provided in Section 10.11(b).

"Specified Event of Default" shall mean any Event of Default arising under Section 11.01, 11.03(i) (solely relating to a failure to comply with Section 10.11 or Section 9.17(c), (d), (e) or (f)), 11.02 (solely with respect to any material inaccuracy in any Borrowing Base Certificate), 11.03(ii) or 11.05.

"Specified Excess Availability" shall mean, at any time, the sum of (a) Availability at such time *plus* (b) 5.0% of Specified Suppressed Availability (which shall not be less than zero) at such time.

"Specified Floor Plan Companies" shall mean any entity that is a borrower under a Floor Plan Financing, which (a) as of the Closing Date, shall be Custom Truck & Equipment, LLC, a Missouri limited liability company, and (b) after the Closing Date, shall be each Subsidiary identified in a Compliance Certificate as a Specified Floor Plan Company pursuant to Section 9.01(e)(iii) or otherwise from time to time.

"Specified Permitted Adjustments" shall mean all adjustments of the type or nature identified in the calculation of "Adjusted EBITDA" and "Pro Forma Adjusted EBITDA" as set forth in the section entitled, "Summary—Summary Historical Consolidated and Unaudited Pro Forma Condensed Combined Financial Information and Other Data" in the offering memorandum for the Secured Notes to the extent such adjustments, without duplication, continue to be applicable to the reference period (it being understood that such

adjustments shall be calculated net of the amount of actual benefits realized or expected to be realized during such reference period that are otherwise included in the calculation of Consolidated EBITDA).

"Specified Representations" shall mean the representations and warranties of the Credit Parties set forth in Sections 8.01, 8.02, 8.03(iii) (in the case of any tranche of Revolving Loans with respect to which such Specified Representations are made, limited to the incurrence of such tranche of Revolving Loans in the case of the Borrower, the provision or reaffirmation of the applicable Guaranty in the case of each Guarantor and the grant or reaffirmation of the Liens in the Collateral to the Collateral Agent for the benefit of the Secured Creditors in the case of all Credit Parties), 8.05(b), 8.08(c) (in the case of any tranche of Revolving Loans with respect to which such Specified Representations are made, limited to the incurrence and use of proceeds thereof), 8.08(d) (in the case of any tranche of Revolving Loans with respect to which such Specified Representations are made, limited to the incurrence and use of proceeds thereof), 8.11, 8.15 (in the case of any tranche of Revolving Loans with respect to which such Specified Representations are made, limited to the incurrence and use of proceeds thereof and solely with respect to the Patriot Act, applicable Sanctions, and Anti-Corruption Laws) and 8.16.

"Specified Suppressed Availability" shall mean an amount, if positive, by which the Borrowing Base exceeds the Aggregate Commitments.

"Sponsors" shall mean, collectively, Platinum, Capitol Acquisition Founder IV, LLC, The Blackstone Group Inc. and Energy Capital Partners III, LP and, in each case, its Affiliates (excluding any operating portfolio company thereof).

"Spot Rate" shall mean the exchange rate, as reasonably determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source reasonably designated by the Administrative Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in the Administrative Agent's principal foreign exchange trading office for the first currency.

"Springing Financial Covenant" shall mean the springing financial covenant set forth in Section 10.11(a).

"Standard Securitization Undertakings" shall mean representations, warranties, covenants, indemnities and guarantees of performance entered into by the Borrower or any of its Subsidiaries which the Borrower has determined in good faith to be customary in a Securitization Transaction including, without limitation, those relating to the servicing of the assets of a Securitization Entity, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"Subordinated Indebtedness" shall mean any Indebtedness that is expressly subordinated in right of payment to the Obligations.

"Subsequent Transaction" shall have the meaning provided in Section 1.05.

"Subsidiary" shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, unlimited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.

"Subsidiary Borrower" shall mean each Subsidiary of the Borrower that becomes a party to this Agreement in accordance with the requirements of this Agreement.

"Subsidiary Guarantor" shall mean each Restricted Subsidiary that becomes a party to the Guaranty Agreement on the Closing Date, as well as each Restricted Subsidiary that becomes a party to the Guaranty Agreement in accordance with the requirements of this Agreement or the provisions of the Guaranty Agreement.

"Supermajority Lenders" shall mean those Non-Defaulting Lenders which would constitute the Required Lenders under, and as defined in, this Agreement if the percentage "50%" contained therein were changed to "66-2/3%."

"Supported QFC" shall have the meaning provided in Section 13.25.

"Swap Contract" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligation" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.12, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.12.

"Swingline Exposure" shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

"Swingline Lender" shall mean Bank of America.

"Swingline Loan" shall mean any Loan made by the Swingline Lender pursuant to Section 2.12.

"Swingline Note" shall mean each swingline note substantially in the form of Exhibit B-2 hereto.

"Synthetic Lease" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"Target" shall have the meaning provided in the recitals hereto.

"Target Person" shall have the meaning provided in Section 10.05.

"Target Refinancing" shall mean the repayment in full of the indebtedness of the Target under that certain Credit Agreement, dated as of April 18, 2017, by and among the Company (f/k/a Utility One Source, L.P.), CTOS, LLC (f/k/a UOS, LLC), the other entities party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent.

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

"Term SOFR" shall mean the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of "Interest Period" and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

"Test Period" shall mean each period of four consecutive fiscal quarters of the Borrower (in each case taken as one accounting period) for which Section 9.01 Financials have been (or were required to be) delivered or are otherwise internally available; *provided* that, until the first such Section 9.01 Financials are (or are required to be) delivered hereunder or are otherwise internally available, "Test Period" shall mean the four consecutive fiscal quarters of the Borrower for which financial statements have been delivered pursuant to Section 6.11.

"Threshold Amount" shall mean the greater of $100,000,000 and 30.0% of Consolidated EBITDA.

"Titled Goods" means vehicles and similar items that are (a) subject to certificate-of-title statutes or regulations under which a security interest in such items are perfected by an indication on the certificates of title of such items (in lieu of filing of financing statements under the UCC) or (b) evidenced by certificates of ownership or other registration certificates issued or required to be issued under the laws of any jurisdiction.

"Transaction" shall mean, collectively, (i) the entering into of the Credit Documents and the incurrence of Loans (if any) on the Closing Date, (ii) the consummation of the Acquisition pursuant to the terms of the Acquisition Agreement, (iii) the entering into of the Secured Notes Indenture and the issuance of the Secured Notes on or before the Closing Date, (iv) the Additional Equity Investment, (v) the Cash Equity Financing, (vi) the Rollover Financing, (vii) the Refinancing and (viii) the payment of all Transaction Costs.

"Transaction Costs" shall mean the fees, premiums, commissions and expenses payable by Holdings, the Borrower and its Subsidiaries in connection with the transactions described in clauses (i) through (vi) of the definition of "Transaction."

"Type" shall mean the type of Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Loan, LIBO Rate Loan or CDOR Rate Loan.

"UCC" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"UK Financial Institution" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Undisclosed Administration" shall mean in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"Unfunded Pension Liability" of any Plan subject to Title IV of ERISA shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.

"United States" and "U.S." shall each mean the United States of America.

"Unrestricted Subsidiary" shall mean (i) on the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.01(B), except to the extent redesignated as a Restricted Subsidiary in accordance with Section 9.16 and (ii) any other Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 9.16 subsequent to the Closing Date, in each case, except to the extent redesignated as a Restricted Subsidiary in accordance with such Section 9.16; *provided*, *however*, that (a) no Subsidiary Borrower shall be designated as an Unrestricted Subsidiary unless released from its obligations as a Subsidiary Borrower concurrently with or after satisfaction of all applicable conditions to such designation in accordance with Section 9.16, (b) any

Subsidiary of an Unrestricted Subsidiary shall automatically be deemed an Unrestricted Subsidiary and (c) each Securitization Entity shall be deemed an Unrestricted Subsidiary.

"Unused Line Fee" shall have the meaning provided in Section 2.05(a).

"Unused Line Fee Rate" shall mean, (a) initially, 0.375% *per annum* and (b) from and after June 30, 2021 the rate shall be adjusted quarterly on a prospective basis, (x) if the average daily unused portion of Revolving Commitments during the immediately preceding fiscal quarter is greater than 50% of the Revolving Commitments, 0.375% *per annum* on the average daily amount by which the Revolving Commitments exceed the Revolving Exposure of all Lenders, and (y) if the average daily unused portion of Revolving Commitments is less than or equal to 50% of the Revolving Commitments, 0.250% *per annum* on the average daily amount by which the Revolving Commitments exceed the Revolving Exposure of all Lenders, in each case, calculated based upon the actual number of days elapsed over a 360-day year payable quarterly in arrears.

"UOS GP" shall have the meaning provided in the recitals hereto.

"U.S. Collateral" shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) by any U.S. Credit Party pursuant to the any Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.13, including, without limitation, collateral as described in the U.S. Security Agreement. For the avoidance of doubt, in no event shall U.S. Collateral include Excluded Collateral or any interests in Real Property.

"U.S. Credit Party" shall mean Holdings, the Borrower and each U.S. Subsidiary that is or becomes a Subsidiary Guarantor.

"U.S. Dollars" and the sign "$" shall each mean freely transferable lawful money (expressed in dollars) of the United States.

"U.S. Dominion Account" shall mean a special concentration account established by the Borrower in the United States, at a bank reasonably acceptable to the Administrative Agent, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Credit Documents.

"U.S. GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time; *provided* that determinations made pursuant to this Agreement in accordance with U.S. GAAP are subject (to the extent provided therein) to Section 13.07(a).

"U.S. Person" shall mean a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Security Agreement" shall mean the U.S. Security Agreement executed by each U.S. Credit Party as of the date of this Agreement creating security interests over certain assets of such U.S. Credit Parties.

"U.S. Security Documents" shall mean the U.S. Security Agreement, each Deposit Account Control Agreement of a U.S. Credit Party, and, after the execution and delivery thereof, each Additional Security Document of a U.S. Credit Party.

"U.S. Special Resolution Regimes" shall have the meaning provided in Section 13.28.

"U.S. Sweep" shall have the meaning provided in Section 9.17(c).

"U.S. Subsidiary" shall mean, as to any Person, any Subsidiary of such Person that is incorporated, formed or otherwise organized under the laws of the United States, any state thereof or the District of Columbia.

"U.S. Tax Compliance Certificate" shall have the meaning provided in Section 5.01(e)(ii)(B)(3).

"VI Blocker" shall have the meaning provided in the recitals hereto.

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the then outstanding principal amount of such Indebtedness into (ii) the product obtained by multiplying (x) the amount of each then remaining installment or other required scheduled payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

"Wholly-Owned Domestic Subsidiary" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a U.S. Subsidiary of such Person.

"Wholly-Owned Restricted Subsidiary" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Restricted Subsidiary of such Person.

"Wholly-Owned Subsidiary" shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clause (i) or (ii), director's qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

"Write-Down and Conversion Powers" shall mean (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Terms Generally and Certain Interpretive Provisions. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall"; and the words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs, clauses and subclauses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, (a) all references to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by any Credit Document and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Any reference herein or in any other Credit Document to the satisfaction, repayment, or payment in full of the Obligations or the Obligations having been repaid in full, or words of similar import, shall mean (i) the payment or repayment in full of all such Obligations (other than (x) LC Exposure of the type described in clause (a) of the definition thereof, (y) contingent indemnification Obligations for which no claim has been asserted and (z) Secured Bank Product Obligations), (ii) the receipt by the Administrative Agent of Cash Collateral in order to secure LC Exposure of the type described in clause (b) of the definition thereof, and (iii) the termination of all of the Commitments of the Lenders. For purposes of determining compliance at any time with Sections 10.01, 10.02, 10.03, 10.04, 10.05, 10.06 and 10.07(a), it is understood and agreed that any Lien, sale, lease or other disposition of assets, Dividend, Indebtedness, Investment, Affiliate transaction or prepayment of Indebtedness need not be permitted solely by reference

to one category of permitted Lien, sale, lease or other disposition of assets, Dividend, Indebtedness, Investment, Affiliate transaction or prepayment of Indebtedness under Sections 10.01, 10.02, 10.03, 10.04, 10.05, 10.06 and 10.07(a), respectively, but may instead be permitted in part under any combination thereof (it being understood that the Borrower may utilize amounts under any category that is subject to any financial ratio or test, including the Consolidated Total Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio, the Consolidated Fixed Charge Coverage Ratio, Payment Conditions or Distribution Conditions, prior to amounts under any other category. For purposes of determining compliance at any time with Sections 10.01, 10.03, 10.04 and 10.05, in the event that any Lien, Dividend, Investment or Indebtedness meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 10.01, 10.03, 10.04 and 10.05, the Borrower, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) (except reclassification into any category or item that is subject to Payment Conditions or Distribution Conditions) and will only be required to include the amount and type of such transaction (or portion thereof) in any one category by providing written notice to the Administrative Agent at the Administrative Agent's reasonable request of the amount of Indebtedness, Dividends, Investments or Liens to be reclassified and certifying that such Indebtedness, Dividends, Investments or Liens, as applicable, could be incurred under such other category on the date of such notice. For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Credit Document) and for all other purposes pursuant to which the interpretation or construction of a Credit Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall be deemed to include "movable property", (ii) "real property" shall be deemed to include "immovable property", (iii) "tangible property" shall be deemed to include "corporeal property", (iv) "intangible property" shall be deemed to include "incorporeal property", (v) "security interest" and "mortgage" shall be deemed to include a "hypothec", (vi) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (viii) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (ix) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall be deemed to include a "mandatary", (xi) "gross negligence or willful misconduct" shall be deemed to include "gross or intentional fault" and (xi) all references to "foreclosure" or similar terms shall be deemed to include the "exercise of a hypothecary right". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement*.

Section 1.03 Exchange Rates; Currency Equivalent. All references in the Credit Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar Equivalent of any amounts denominated or reported under a Credit Document in a currency other than Dollars shall be determined by the Administrative Agent on a daily basis, based on the current Spot Rate. The Borrower shall report value and other Borrowing Base components to the Administrative Agent in the currency invoiced by the Borrower or shown in the Borrower's financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, the Borrower shall repay such Obligation in such other currency.

Notwithstanding anything to the contrary in this Agreement, (i) any representation or warranty that would be untrue or inaccurate, (ii) any undertaking that would be breached, (iii) any basket is exceeded or (iv) any event that would constitute a Default or an Event of Default, in each case, solely as a result of fluctuations in applicable currency exchange rates, shall not be deemed to be untrue, inaccurate, breached or so constituted, as applicable, solely as a result of such fluctuations in currency exchange rates.

Section 1.04 Additional Alternative Currencies.

(a) The Borrower may from time to time request that Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; *provided* that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Loans, such request shall be subject to the approval of the Administrative Agent and the Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable Issuing Bank.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable Issuing Bank, in its or their sole discretion). In the case of any such request pertaining to Loans, the Administrative Agent shall promptly notify each applicable Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the applicable Issuing Bank thereof. Each applicable Lender (in the case of any such request pertaining to Loans) or the applicable Issuing Bank (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the applicable Issuing Bank, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the applicable Issuing Bank, as the case may be, to permit Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Lenders with Commitments in respect of the subfacility under which such additional Alternative Currency is being requested consent to making Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Loans; and if the Administrative Agent and the applicable Issuing Bank consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.04, the Administrative Agent shall promptly so notify the Borrower.

Section 1.05 Limited Condition Transactions. Notwithstanding anything to the contrary in this Agreement, in connection with any action being taken in connection with a Limited Condition Transaction (other than (a) the making by any Lender or Issuing Bank, as applicable, of any Credit Extension unless otherwise agreed by such Lender or Issuing Bank and (b) determining Availability for purposes of the Payment Conditions or Distribution Conditions, other than with respect to any Limited Condition Transaction that is to be financed solely with proceeds of newly committed financing not constituting Commitments hereunder), for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated Total Net Leverage Ratio, Consolidated Secured Net Leverage Ratio and Consolidated Fixed Charge Coverage Ratio;

(ii) testing availability under baskets set forth in this Agreement (including baskets determined by reference to Consolidated EBITDA or Consolidated Total Assets, as applicable); or

(iii) determining other compliance with this Agreement (including the determination that representations and warranties are true and correct and that no Default or Event of Default (or any type of Default or Event of Default) has occurred, is continuing or would result therefrom);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), the date of determination of whether any such action is permitted hereunder shall be made (1) in the case of any acquisition (including by way of merger or amalgamation) or similar Investment (including the assumption or incurrence of Indebtedness in connection therewith), at the time of (or, in the case of any calculation or any financial ratio or test, with respect to, or as of the last day of the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect to such acquisition or Investment, (y) the public announcement of an intention to make an offer in respect of the target of such acquisition or Investment or (z) the consummation of such acquisition or Investment, (2) in the case of any Dividend, at the time of (or, in the case of any calculation or any financial ratio or test, with respect to, or as of the last day of the most recently ended Test Period at the time of) (x) the irrevocable declaration of such Dividend or (y) the making of such Dividend and (3) in the case of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a), at the time of (or, in the case of any calculation or any financial ratio or test, with respect to, or as of the last day of the most recently ended Test Period at the time of) (x) delivery of irrevocable (which may be conditional) notice with respect to such payment or prepayment or redemption or acquisition of such Indebtedness or (y) the making of such voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness (the "LCT Test Date"), and if, for the Limited Condition Transaction (and the other transactions to be entered into in connection therewith), the Borrower or any of its Restricted Subsidiaries would have been permitted to take such action on the relevant

LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Consolidated Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have failed to have been complied with as a result of such fluctuations; *provided*, that, notwithstanding anything to the contrary herein, if financial statements for one or more subsequent Test Periods shall have become available, the Borrower may elect, in its sole discretion, to re-determine all such baskets, ratios or tests, with respect to, or as of the last day of, the most recently ended Test Period on the basis of such financial statements, in which case such date of redetermination shall thereafter be deemed to be the LCT Test Date for purposes of such baskets, ratios and tests. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Dividends, the making of any Permitted Investment, mergers, amalgamations, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (each, a "Subsequent Transaction") following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement, public announcement or irrevocable notice for such Limited Condition Transaction is terminated, revoked or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

Section 1.06 Divisions. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.07 Treatment of Subsidiaries Prior to Joinder. Each Subsidiary of Holdings that is required to be joined as a Credit Party pursuant to Section 9.12 shall, from the time of the requirement that such Subsidiary be joined as a Credit Party pursuant to Section 9.12 until the completion of such joinder, be deemed for the purposes of Article 10 of this Agreement to be a Credit Party from and after the date of formation or acquisition of such subsidiary; *provided* that this Section 1.07 shall only apply to the extent such Subsidiary is actually subsequently joined as a Credit Party pursuant to Section 9.12.

ARTICLE 2 Amount and Terms of Credit.

Section 2.01 The Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Revolving Loans to the Borrower in Dollars or in one or more Alternative Currencies, if any, at any time and from time to time on and after the Closing Date until the earlier of one Business Day prior to the Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in the Availability Conditions not being met. Within the limits set forth above and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans.

Section 2.02 Loans.

(a) Each Revolving Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their applicable Revolving Commitments; *provided* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans (other than Swingline Loans) comprising any Borrowing shall be in an aggregate principal amount that is (i) (A) in the case of Base Rate Loans, equal to the amount requested by the Borrower, and (B) in the case of LIBO Rate Loans, an integral multiple of $250,000 and not less than $1,000,000 and (C) in the case of CDOR Rate Loans, an integral multiple of C$250,000 and not less than C$1,000,000, or (ii) equal to the remaining available balance of the Revolving Commitments.

(b) Subject to Section 3.01, each Borrowing of Revolving Loans shall be comprised entirely of Base Rate Loans, LIBO Rate Loans or CDOR Rate Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any LIBO Rate Loan or CDOR Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not limit or expand the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement or cause the Borrower to pay additional amounts pursuant to Section 3.01. Borrowings of more than one Type may be outstanding at the same time; *provided*, *further*, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than 10 Borrowings outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan (other than Swingline Loans) to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate, by not later than 3:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to the Designated Account (or such other deposit account of the Borrower specified in the applicable Notice of Borrowing) or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met or waived, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with clause (c) 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, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(f) If an Issuing Bank shall not have received from the Borrower the payment required to be made by Section 2.13(e) within the time specified in such Section, such Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each applicable Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each such Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 11:00 a.m., New York City time on the immediately following Business Day), an amount equal to such Lender's Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute a Base Rate Loan (for LC Disbursements denominated in Dollars), a CDOR Rate Loan with an Interest Period of one month (for LC Disbursements denominated in Canadian Dollars) or a LIBO Rate Loan with an Interest Period of one month (for LC Disbursements denominated in any other currency) of such Lender, and such payment shall be deemed to have reduced the applicable LC Exposure), and the Administrative Agent will promptly pay to such Issuing Bank amounts so received by it from the applicable Lenders. The Administrative Agent will promptly pay to the applicable Issuing Bank any amounts received by it from the Borrower pursuant to Section 2.13(e) prior to the time that any Lender makes any payment pursuant to this clause (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Lenders that shall have made such payments and to the applicable Issuing Bank, as their interests may appear. If any Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Lender and the Borrower, severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this clause (f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the applicable Issuing Bank at (i) in the case of the Borrower, a rate *per annum* equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06, and (ii) in the case of such Lender, at the Base Rate (for Dollars), the CDOR Rate with an Interest Period of one month (for Canadian Dollars) or the LIBO Rate with an Interest Period of one month for all other currencies.

Section 2.03 Borrowing Procedure. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed) (i) in the case of a Borrowing of LIBO Rate Loans, not later than 1:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a Borrowing of CDOR Rate Loans, not later than 1:00 p.m., Toronto time, three Business Days before the date of the proposed Borrowing to the Administrative Agent's Toronto office or (iii) in the case of a Borrowing of Base Rate Loans (other than Swingline Loans), not later than 12:00 noon, New York City time, on the Business Day of the proposed Borrowing. Notwithstanding the foregoing, if the Borrower wishes to request LIBO Rate Loans having an Interest Period other than one, three or six months in duration, or if agreed to by all Lenders, twelve months or less than one month in duration with the consent of the Administrative Agent, in each case as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days before the date of the proposed Borrowing, whereupon the Administrative Agent shall give prompt notice to each Lender with a relevant Revolving Commitment of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the proposed date of such Borrowing, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by such Lenders. Each such telephonic Notice of Borrowing shall be irrevocable, subject to Sections 2.09 and 3.01, and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Borrowing in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Notice of Borrowing shall specify the following information in compliance with Section 2.02:

(a) the name of the Borrower;

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be a Borrowing of Base Rate Loans, a Borrowing of LIBO Rate Loans or a Borrowing of CDOR Rate Loans;

(e) in the case of a Borrowing of LIBO Rate Loans or CDOR Rate Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(f) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02;

(g) the currency of the Borrowing;

(h) the amount of Eligible Cash as of the close of business on the Business Day prior to the date of such notice and the remaining Availability after adjusting for the proposed Borrowing; and

(i) that the conditions set forth in Article 6 or Article 7, as applicable, are satisfied or waived as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Borrowing of Base Rate Loans (for Borrowings in U.S. Dollars) and CDOR Rate Loans with an Interest Period of one month's duration (for Borrowings in Canadian Dollars). If no Interest Period is specified with respect to any requested Borrowing of LIBO Rate Loans or CDOR Rate Loans, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If no currency is specified, then the requested Borrowing shall be made in U.S. Dollars. Promptly following receipt of a Notice of Borrowing in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

This Section 2.03 shall not apply to Swingline Loans, the borrowing of which shall be in accordance with Section 2.12.

Section 2.04 Evidence of Debt; Repayment of Loans.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender, the then unpaid principal amount of each Revolving Loan of such Lender on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan made to the Borrower on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof, the currency thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender. The Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(d) The entries made in the accounts maintained pursuant to clauses (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded absent manifest error; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall promptly prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit B.

Section 2.05 Fees.

(a) Unused Line Fee. The Borrower shall pay to the Administrative Agent, for the *pro rata* benefit of the Lenders (other than any Defaulting Lender), a fee in Dollars equal to the Unused Line Fee Rate multiplied by the amount by which the Revolving Commitments (other than Revolving Commitments of a Defaulting Lender) exceed the average daily balance of outstanding Revolving Loans (other than Swingline Loans) and stated amount of outstanding Letters of Credit during any fiscal quarter (such fee, the "Unused Line Fee"). Such fee shall accrue commencing on the Closing Date, and will be payable in arrears, on each Adjustment Date, commencing on or about July 1, 2021.

(b) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent (the "Administrative Agent Fees").

(c) LC and Fronting Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee ("LC Participation Fee") in Dollars with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on LIBO Rate Loans pursuant to Section 2.06, on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank a fronting fee ("Fronting Fee"), which shall accrue at the rate of 0.125% *per annum* on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as each Issuing Bank's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder as agreed among the Borrower and such Issuing Bank from time to time. LC Participation Fees and Fronting Fees shall be payable on each Adjustment Date, commencing on the first such date to occur after the Closing Date; *provided* that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand (including documentation reasonably supporting such request). Any other fees payable to the Issuing Banks pursuant to this clause (c) shall be payable within 10 days after written demand (together

with backup documentation supporting such reimbursement request). All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders (other than Defaulting Lenders). Once paid, none of the fees shall be refundable under any circumstances.

Section 2.06 Interest on Loans.

(a) Base Rate Loans. Subject to the provisions of Section 2.06(d), the Loans comprising each Borrowing of Base Rate Loans, including each Swingline Loan, shall bear interest at a rate *per annum* equal to the Base Rate *plus* the Applicable Margin in effect from time to time.

(b) LIBO Rate Loans. Subject to the provisions of Section 2.06(d), the Loans comprising each Borrowing of LIBO Rate Loans shall bear interest at a rate *per annum* equal to the LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin in effect from time to time.

(c) CDOR Rate Loans. Subject to the provisions of Section 2.06(d), the Loans comprising each Borrowing of CDOR Rate Loans shall bear interest at a rate *per annum* equal to the CDOR Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin in effect from time to time

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of, or interest on, any Loan, 2% *plus* the rate otherwise applicable to such Loan or (ii) in the case of any other amount, 2% *plus* the rate applicable to Base Rate Loans.

(e) Accrued interest on each Loan shall be payable in arrears (i) in the case of Base Rate Loans, on each Adjustment Date, commencing with July 1, 2021, for such Base Rate Loans, (ii) in the case of LIBO Rate Loans or CDOR Rate Loans, at the end of the current Interest Period therefor and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period and (iii) in the case of all Revolving Loans, upon termination of the Revolving Commitments; *provided* that (x) interest accrued pursuant to clause (d) of this Section 2.06 shall be payable on demand and, absent demand, on each Adjustment Date, at the end of the current Interest Period and upon termination of the Revolving Commitments, as applicable, (y) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (z) in the event of any conversion of any LIBO Rate Loan or CDOR Rate Loans prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder for Base Rate Loans (including Base Rate Loans determined by reference to the LIBO Rate) shall be computed on the basis of a year of 365/366 days. All interest hereunder for Loans denominated in Canadian Dollars shall be computed on the basis of a year of 365 days. All other computations of interest and all fees shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, CDOR Rate or LIBO Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

(g) For purposes of the *Interest Act* (Canada), (i) whenever any interest or fee under this Agreement is calculated using a rate based on a year of 360 or 365 days or any other period of time that is less than a calendar year, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on the number of days in the calendar year, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest is payable (or compounded) ends, and (z) divided by 360, 365 or such other period of time that is less than the calendar year, as the case may be, (ii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement, and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(h) If any provision of this Agreement or of any of the other Credit Documents would obligate any Canadian Credit Party to make any payment of interest or other amount payable to the Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lenders of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to the Lenders under this Section 2.06, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Lenders which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the Lenders shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), the Canadian Credit Parties shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Lenders in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by the Lenders to the applicable Canadian Credit Parties. Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent shall be conclusive for the purposes of such determination.

Section 2.07 Termination and Reduction of Commitments.

(a) The Revolving Commitments, the Swingline Commitment and the LC Commitment shall automatically terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; *provided* that (i) any such reduction shall be in an amount that is (x) an integral multiple of $1,000,000 or (y) the entire remaining Revolving Commitments; and (ii) the Revolving Commitments shall not be terminated or reduced if after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.09, the Revolving Exposures would exceed the Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under clause (b) of this Section 2.07 at least three Business Days prior to the effective date of such termination or reduction (or such shorter period as the Administrative Agent shall agree in its reasonable discretion), specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the relevant Lenders of the contents thereof. Each such notice shall be irrevocable except that, to the extent delivered in connection with a refinancing of the Obligations or other contingent transactions, such notice shall not be irrevocable until such refinancing is closed and funded or other contingent transactions have been consummated. Any effectuated termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the relevant Lenders in accordance with their respective Revolving Commitments.

Section 2.08 Interest Elections.

(a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing and, in the case of a Borrowing of LIBO Rate Loans or CDOR Rate Loans, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Borrowing of LIBO Rate Loans or CDOR Rate Loans, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than 10 Borrowings outstanding hereunder at any one time. This Section 2.08 shall not apply to Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Borrower shall notify the Administrative Agent of such election by telephone or electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, delayed or conditioned) by the time that a Notice of Borrowing would be required under Section 2.03 if

the Borrower was requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election, subject to Section 3.05. Each such telephonic Notice of Conversion/Continuation shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Conversion/Continuation substantially in the form of Exhibit A-3, unless otherwise agreed to by the Administrative Agent and the Borrower.

(c) Each telephonic and written Notice of Conversion/Continuation shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Notice of Conversion/Continuation applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Borrowing of Base Rate Loans, a Borrowing of LIBO Rate Loans or a Borrowing of CDOR Rate Loans;

(iv) the currency of the resulting Borrowing; and

(v) if the resulting Borrowing is a Borrowing of LIBO Rate Loans or CDOR Rate Loans, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Notice of Conversion/Continuation requests a Borrowing of LIBO Rate Loans or CDOR Rate Loans but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. No Borrowing may be converted into or continued as a Borrowing denominated in a different currency, but instead must be prepaid in the original currency of such Borrowing and reborrowed in the other currency.

(d) Promptly following receipt of a Notice of Conversion/Continuation, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If a Notice of Conversion/Continuation with respect to a Borrowing of LIBO Rate Loans denominated in Dollars is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Borrowing of Base Rate Loans. If a Notice of Conversion/Continuation with respect to a Borrowing of CDOR Rate Loans or LIBO Rate Loans denominated in an Alternative Currency is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Borrowing with an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, after the occurrence and during the continuance of such Event of Default (i) no outstanding Borrowing may be converted to or continued as a Borrowing of LIBO Rate Loans or CDOR Rate Loans, (ii) unless repaid, each Borrowing of LIBO Rate Loans shall be converted to a Borrowing of Base Rate Loans at the end of the Interest Period applicable thereto and (iii) each Borrowing of CDOR Rate Loans shall be repaid at the end of the Interest Period applicable thereto and may be reborrowed as a Borrowing of Base Rate Loans.

Section 2.09 Optional and Mandatory Prepayments of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay, without premium or penalty (subject to Section 3.02), any Borrowing, in whole or in part, subject to the requirements of this Section 2.09; *provided* that each partial prepayment shall be in an amount that is an integral multiple of $100,000 (or the Dollar Equivalent thereof).

(b) Revolving Loan Prepayments.

(i) In the event of the termination of all of the Revolving Commitments, the Borrower shall, on the date of such termination, repay or prepay all the outstanding Revolving Borrowings and all outstanding Swingline Loans and Cash Collateralize or backstop on terms reasonably satisfactory to the Administrative Agent the LC Exposure in accordance with Section 2.13(j).

(ii) In the event of any partial reduction of the Revolving Commitments, then (A) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Borrower and the Lenders of the Aggregate Exposures after giving effect thereto and (B) if the Revolving Exposures would exceed the Line Cap then in effect, after giving effect to such reduction, then the Borrower shall, on the date of such reduction (or, if such excess is due to the imposition of new Reserves, a change in the methodology of calculating existing Reserves, a change in eligibility standards or the occurrence of a Revaluation Date, within five Business Days following such notice), *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings and *third*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iii) In the event that the Aggregate Exposures at any time exceed the Line Cap then in effect, the Borrower shall, immediately after demand (or, if such overadvance is due to the imposition of new Reserves, a change in the methodology of calculating existing Reserves, a change in eligibility standards or the occurrence of a Revaluation Date, within five Business Days following notice), apply an amount equal to such excess to prepay the Loans and any interest accrued thereon, *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings and *third*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iv) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, the Borrower shall, without notice or demand, immediately replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(c) Application of Prepayments.

(i) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to this paragraph (i) of Section 2.09(c). Unless during a Liquidity Period, except as provided in Section 2.09(b)(iii) hereof, all mandatory prepayments shall be applied as follows: *first*, to fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to the Credit Documents; *second*, to interest then due and payable on the Swingline Loans; *third*, to the principal balance of the Swingline Loan outstanding until the same has been prepaid in full; *fourth*, to interest then due and payable by the Borrower on the Revolving Loans and other amounts due pursuant to Sections 3.02 and 5.01; *fifth*, to the principal balance of the Revolving Loans until the same have been prepaid in full; *sixth*, to Cash Collateralize all LC Exposure *plus* any accrued and unpaid interest thereon (to be held and applied in accordance with Section 2.13(j) hereof); *seventh*, to all other Obligations *pro rata* in accordance with the amounts that such Lender certifies is outstanding; and *eighth*, as required by the Intercreditor Agreement or, in the absence of any such requirement, returned to the Borrower or to such party as otherwise required by law.

(ii) Amounts to be applied pursuant to this Section 2.09 to the prepayment of Revolving Loans shall be applied, as applicable, first to reduce outstanding Base Rate Loans. Any amounts remaining after each such application shall be applied to prepay LIBO Rate Loans and CDOR Rate Loans, as applicable. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.09 shall be in excess of the amount of the Base Rate Loans at the time outstanding, only the portion of the amount of such prepayment that is equal to the amount of such outstanding Base Rate Loans shall be immediately prepaid and, at the election of the Borrower, the balance of such required prepayment shall be either (A) deposited in the LC Collateral Account and applied to the prepayment of LIBO Rate Loans or CDOR Rate Loans, as applicable, on the last day of the then next expiring Interest Period for LIBO Rate Loans or CDOR Rate Loans, as applicable, (with all interest accruing thereon for the account of the Borrower) or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.10. Notwithstanding any such deposit in the LC Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(d) Notice of Prepayment. The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Borrowing of LIBO Rate Loans, to the Administrative Agent's New York office not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of a Borrowing of CDOR Rate Loans, to the Administrative

Agent's Toronto office not later than 1:00 p.m., Toronto time, three Business Days before the date of prepayment, (iii) in the case of prepayment of a Borrowing of Base Rate Loans, to the Administrative Agent's New York office not later than 4:00 p.m., New York City time, on the date of prepayment and (iv) in the case of a prepayment of a Swingline Loan, to the Administrative Agent's New York office, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Each notice of prepayment pursuant to this Section 2.09 shall be irrevocable, except that the Borrower may, by subsequent notice to the Administrative Agent, revoke any such notice of prepayment if such notice of revocation is received not later than 10:00 a.m. (New York City time) on the day on which such prepayment is scheduled to occur and, *provided* that (i) the Borrower reimburses each Lender pursuant to Section 3.02 for any funding losses within five Business Days after receiving written demand therefor and (ii) the amount of Loans as to which such revocation applies shall be deemed converted to (or continued as, as applicable) Base Rate Loans, or LIBO Rate Loans (not denominated in Dollars) or CDOR Rate Loans, as applicable, with an Interest Period of one month, in accordance with the provisions of Section 2.08 as of the date of notice of revocation (subject to subsequent conversion in accordance with the provisions of this Agreement). Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

Section 2.10 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder or under any other Credit Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 3.01, 3.02 and 5.01 or otherwise) at or before the time expressly required hereunder or under such other Credit Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time or other Applicable Time specified by the Administrative Agent), on the date when due, in immediately available funds, without set-off or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's applicable office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 3.01, 3.02, 5.01 and 13.01 shall be made to the Administrative Agent for the benefit of to the Persons entitled thereto and payments pursuant to other Credit Documents shall be made to the Administrative Agent for the benefit of the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Credit Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied in the manner as provided in Section 2.09(c) or 11.11 hereof, as applicable, ratably among the parties entitled thereto.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements

and Swingline Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this clause (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this clause (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Credit Parties rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of a Credit Party in the amount of such participation. For purposes of clause (b) of the definition of "Excluded Taxes," a Lender that acquires a participation pursuant to this Section 2.10(c) shall be treated as having acquired such participation on the earlier date(s) on which it acquired an interest in the applicable Loan(s) or Commitment(s) to which such participation relates.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or applicable Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due.

With respect to any payment that the Administrative Agent makes for the account of the Lenders or the applicable Issuing Bank hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (d) shall be conclusive, absent manifest error.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.02(f), 2.10(d), 2.12(d) or 2.13(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.11 Defaulting Lenders.

(a) Reallocation of Pro Rata Share; Amendments. For purposes of determining the Lenders' obligations to fund or acquire participations in Loans or Letters of Credit, the Administrative Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata Shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Credit Document, except as provided in Section 13.12.

(b) Payments; Fees. The Administrative Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Credit Documents, and a Defaulting Lender shall be deemed to have assigned to the Administrative Agent such amounts until all Obligations owing to the Administrative Agent, Non-Defaulting Lenders and other Secured Creditors have been paid in full. The Administrative Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts to the Borrower hereunder. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the Unused Line Fee under Section 2.05(a). To the extent any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, LC Participation Fees attributable to such LC Obligations under Section 2.05(c) shall be paid to such other Lenders. The Administrative Agent shall be paid all LC Participation Fees attributable to LC Obligations that are not so reallocated.

(c) Cure. The Borrower, Administrative Agent and applicable Issuing Bank may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata Shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Loans, LC Obligations and other exposures under the Commitments shall be reallocated among Lenders and settled by the Administrative Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata Shares. Unless expressly agreed by the Borrower, Administrative Agent and applicable Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

Section 2.12 Swingline Loans.

(a) Swingline Commitment. Subject to the terms and conditions set forth herein, the Swingline Lender may, but shall not be obligated to, make Swingline Loans to the Borrower in Dollars from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $75,000,000 or (ii) the Aggregate Exposures exceeding the lesser of (A) the Aggregate Commitments and (B) the Borrowing Base then in effect; *provided* that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow Swingline Loans.

(b) Swingline Loans. To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the applicable Borrower by means of a credit to the Designated Account (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.13(e), by remittance to the applicable Issuing Bank) by 5:00 p.m., New York City time, on the requested date of such Swingline Loan. The Borrower shall not request a Swingline Loan if at the time of and immediately after giving effect to such request a Default has occurred and is continuing. Swingline Loans shall be made in minimum amounts of $100,000.

(c) Prepayment. The Borrower shall have the right at any time and from time to time to repay, without premium or penalty, any Swingline Loan, in whole or in part, upon giving written or telecopy notice (or telephone notice promptly confirmed by written, or telecopy notice) to the Swingline Lender and to the Administrative Agent before 4:00 p.m., New York City time on the date of repayment at the Swingline Lender's address for notices specified in the Swingline Lender's administrative questionnaire. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment.

(d) Participations. The Swingline Lender may by written notice given to the Administrative Agent not later than 4:00 p.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Aggregate Commitments or whether an Overadvance exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (*provided* that such payment shall not cause such Lender's Revolving Exposure to exceed such Lender's Revolving Commitment). Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(f) with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received

by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.

(e) If a Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then on such Maturity Date all then outstanding Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Maturity Date); *provided* that, if on the occurrence of such Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.13(o)), there shall exist sufficient unutilized Extended Revolving Loan Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the Extended Revolving Loan Commitments which will remain in effect after the occurrence of such Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Revolving Loan Commitments and such Swingline Loans shall not be so required to be repaid in full on such Maturity Date.

Section 2.13 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit in U.S. Dollars or in one or more applicable Alternative Currencies (if any) for the Borrower's account or the account of a Subsidiary of the Borrower in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period (*provided* that the Borrower shall be a co-applicant with respect to each Letter of Credit issued for the account of or in favor of a Subsidiary). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything to the contrary herein, the Existing Letters of Credit shall be deemed issued under this Agreement in accordance with the provisions of this Section 2.13 on the Closing Date.

(b) Request for Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, the Borrower shall hand deliver (if arrangements for doing so been approved by the applicable Issuing Bank), telecopy or transmit by electronic communication (if arrangements for doing so have been approved by applicable Issuing Bank) a LC Request to the applicable Issuing Bank and the Administrative Agent not later than 1:00 p.m. on the third Business Day (or, in the case of any Letter of Credit denominated in an Alternative Currency, the fifth Business Day) preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is reasonably acceptable to the applicable Issuing Bank). A request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount and currency thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (vii) such other matters as the applicable Issuing Bank may reasonably require and shall attach the agreed form of the Letter of Credit. A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank, (w) the Letter of Credit to be amended, renewed or extended; (x) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day); (y) the nature of the proposed amendment, renewal or extension; and (z) such other matters as the applicable Issuing Bank may reasonably require. If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application substantially on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, the Borrower shall be deemed to represent and warrant (solely in the case of clauses (w) and (x)) that, after giving effect to such issuance, amendment, renewal or extension) (A) the LC Exposure shall not exceed $50,000,000, (B) the Availability Conditions are satisfied, (C) the LC Exposure of any Issuing Bank shall not exceed its Letter of Credit Commitment (*provided* that this clause (C) shall not apply to the issuance of the Existing Letters of Credit on the Closing Date) and (D) if a Defaulting Lender exists, either such Lender or the Borrower has entered into arrangements reasonably satisfactory to the Administrative Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. Each request for the issuance of a Letter of Credit, or the amendment, renewal or extension of any outstanding Letter of Credit shall be subject to the applicable Issuing Bank's authentication procedures with results reasonably satisfactory to such Issuing Bank.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of the date which is one year after the date of the issuance of such Letter of Credit (or such other longer period of time as the Administrative Agent and the applicable Issuing Bank may agree and, in the case of any renewal or extension thereof, one (1) year after such renewal or extension) and, unless Cash Collateralized if requested by the relevant Issuing Bank, (in which case the expiry may extend no longer than twelve months after the Letter of Credit Expiration Date) the Letter of Credit Expiration Date. Each Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less (but, subject to the foregoing, not beyond the date that is after the Letter of Credit Expiration Date) unless the applicable Issuing Bank notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, the applicable Issuing Bank hereby grants to each Lender, and each such Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Pro Rata Percentage of each LC Disbursement made by the applicable Issuing Bank and not reimbursed by the Borrower on the date due as provided in clause (e) of this Section 2.13, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each applicable Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Aggregate Commitments or whether or not an Overadvance exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the applicable Issuing Bank an amount equal to such LC Disbursement not later than (x) in the case of reimbursement in Dollars, 2:00 p.m., New York City time, on the Business Day after receiving notice from such Issuing Bank of such LC Disbursement or (y) in the case of reimbursement in an Alternative Currency, the Applicable Time specified by the Administrative Agent on the Business Day after receiving notice from such Issuing Bank of such LC Disbursement; *provided* that, whether or not the Borrower submits a Notice of Borrowing, the Borrower shall be deemed to have requested (except to the extent the Borrower makes payment to reimburse such LC Disbursement when due) a Borrowing of Base Rate Loans (and if the applicable Letter of Credit was denominated in Canadian Dollars, such unreimbursed LC Disbursement shall be converted to Dollars for purposes of such Base Rate Loan), in an amount necessary to reimburse such LC Disbursement. If the Borrower fails to make such payment when due, the applicable Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Pro Rata Percentage thereof. Promptly following receipt of such notice, each such Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed LC Disbursement (in Dollars, if the applicable Letter of Credit was denominated in Dollars, or in the applicable Alternative Currency, if the applicable Letter of Credit was denominated in an Alternative Currency) in the same manner as provided in Section 2.02(f) with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from such Lenders. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the applicable Issuing Bank in such Alternative Currency, unless (A) such Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in Dollars (it being understood that all Letters of Credit issued by Wells Fargo Bank, N.A. or any of its Affiliates shall be required to be reimbursed in Dollars), or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified such Issuing Bank promptly following receipt of the notice of drawing that the Borrower will reimburse such Issuing Bank in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the applicable Issuing Bank shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this clause (e), the Administrative Agent shall distribute such payment to the applicable Issuing Bank. Any payment made by a Lender pursuant to this clause (e) to reimburse an Issuing Bank for any LC Disbursement (other than the funding of Base Rate Loans or LIBO Rate Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars pursuant to the third sentence in this Section 2.13(e) and (B) the Dollar amount paid by the Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the Borrower agrees, as a separate and independent obligation, to indemnify the applicable Issuing Bank for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing.

(f) Obligations Absolute.

(i) Subject to the limitations set forth below, the obligation of the Borrower to reimburse LC Disbursements as provided in clause (e) of this Section 2.13 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not strictly comply with the terms of such Letter of Credit, (iv) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary of any Letter of Credit, (v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally or (vi) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.13, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the Borrower hereunder; *provided* that the Borrower shall have no obligation to reimburse any Issuing Bank to the extent that such payment was made in error due to the gross negligence, bad faith, or willful misconduct of such Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction). Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Affiliates or branches, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; *provided* that the foregoing shall not be construed to 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 hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, willful misconduct, or bad faith on the part of any Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction), each Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(ii) No Issuing Bank assumes any responsibility for any failure or delay in performance or any breach by the Borrower or other Person of any obligations under any LC Document. No Issuing Bank makes to the Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, such documents or any Credit Party. No Issuing Bank shall be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Document; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Credit Party.

(iii) No Issuing Bank or any of its Affiliates or branches, and their respective officers, directors, employees, agents and investment advisors shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final nonappealable judgment. No Issuing Bank shall have any liability to any Lender if such Issuing Bank refrains from any action under any Letter of Credit or such LC Documents until it receives written instructions from the Required Lenders.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.13(e)).

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate *per annum* then applicable to Base Rate Loans; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to clause (e) of this Section 2.13, then Section 2.06(f) shall apply. Interest accrued pursuant to this clause (h) shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to clause (e) of this Section 2.13 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Resignation or Removal of any Issuing Bank. Any Issuing Bank may resign as Issuing Bank hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and the Borrower. Any Issuing Bank may be replaced at any time by agreement between the Borrower and the Administrative Agent; *provided* that so long as no Event of Default has occurred and is continuing under Section 11.01 or 11.05, such successor Issuing Bank shall be reasonably acceptable to the Borrower. One or more Lenders may be appointed as additional Issuing Banks in accordance with clause (k) below. The Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank or any such additional Issuing Bank. At the time any such resignation or replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such resignation or replacement or addition, as applicable, (i) the successor or additional Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or such addition or to any previous Issuing Bank, or to such successor or such additional Issuing Bank and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, the Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) Cash Collateralization.

(i) If any Specified Event of Default shall occur and be continuing, on the Business Day after the Borrower receives notice from the Administrative Agent (acting at the request of the Required Lenders) demanding the deposit of Cash Collateral pursuant to this paragraph (i), the Borrower shall deposit in the LC Collateral Account, in the name of the Administrative Agent and for the benefit of the Secured Creditors, an amount in cash equal to 102.00% of the LC Exposure as of such date. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement, but shall be immediately released and returned to the Borrower (in no event later than two (2) Business Days) once all Specified Events of Default are cured or waived. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made only in Cash Equivalents and at the direction of the Borrower and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Banks for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of the Borrower.

(ii) The Borrower shall, on demand by an Issuing Bank or the Administrative Agent from time to time, Cash Collateralize the Fronting Exposure associated with any Defaulting Lender.

(k) Additional Issuing Banks. The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) and such Lender, designate one or more additional Lenders

to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this clause (k) shall be deemed (in addition to being a Lender) to be an Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Credit Documents to the term "Issuing Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank, as the context shall require.

(l) No Issuing Bank shall be under an 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 request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank.

(m) No Issuing Bank shall be under an 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.

(n) LC Collateral Account.

(i) The Administrative Agent is hereby authorized to establish and maintain at the Notice Office, in the name of the Administrative Agent and pursuant to a dominion and control agreement, a restricted deposit account designated "The Borrower LC Collateral Account." Each Credit Party shall deposit into the LC Collateral Account from time to time the Cash Collateral required to be deposited under Section 2.13(j) hereof.

(ii) The balance from time to time in such LC Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. Notwithstanding any other provision hereof to the contrary, all amounts held in the LC Collateral Account shall constitute collateral security first for the liabilities in respect of Letters of Credit outstanding from time to time and second for the other Obligations hereunder until such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of Letters of Credit have been paid in full. All funds in "The Borrower LC Collateral Account" may be invested in accordance with the provisions of Section 2.13(j).

(o) Extended Commitments. If the Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then (i) such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders to purchase participations therein and to make payments in respect thereof pursuant to Sections 2.13(d) and (e)) under (and ratably participated in by Lenders) the Extended Revolving Loan Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Extended Revolving Loan Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.13(j). Except to the extent of reallocations of participations pursuant to the prior sentence, the occurrence of the Maturity Date with respect to Existing Revolving Loans shall have no effect upon (and shall not diminish) the percentage participations of the Lenders of Extended Revolving Loans in any Letter of Credit issued before the Maturity Date.

Section 2.14 Settlement Amongst Lenders.

(a) The Swingline Lender may, at any time (but, in any event shall weekly), on behalf of the Borrower (which hereby authorizes the Swingline Lender to act on its behalf in that regard) request the Administrative Agent to cause the Lenders to make a Revolving Loan (which shall be a Base Rate Loan) in an amount equal to such Lender's Pro Rata Percentage of the Outstanding Amount of Swingline Loans, which request may be made regardless of whether the conditions set forth in Article 7 have been satisfied. Upon such request, each

Lender shall make available to the Administrative Agent the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Loan to be made by the Lenders and the request therefor is received prior to 12:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if the request therefor is received after 12:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each such Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

(b) The amount of each Lender's Pro Rata Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(c) The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans (including Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its applicable Pro Rata Percentage of applicable repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender to the Borrower (including Swingline Loans) shall be equal to such Lender's applicable Pro Rata Percentage of Revolving Loans (including Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 1:00 p.m., New York City time on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m. New York City time, then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

Section 2.15 Revolving Commitment Increase.

(a) Subject to the terms and conditions set forth herein, after the Closing Date, the Borrower shall have the right to request, by written notice to the Administrative Agent, an increase in the Revolving Commitments (a "Revolving Commitment Increase") in an aggregate amount not to exceed the greater of (x) $200,000,000 and (y) 60.0% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01 Financials have been delivered; *provided* that any Revolving Commitment Increase shall be in a minimum amount of $15,000,000 or, if less than $15,000,000 is available, the amount left available.

(b) Each notice submitted pursuant to this Section 2.15 (a "Revolving Commitment Increase Notice") requesting a Revolving Commitment Increase shall specify the amount of the increase in the Revolving Commitments being requested. Upon receipt of a Revolving Commitment Increase Notice, the Administrative Agent may (at the direction of the Borrower) promptly notify the Lenders and/or such other Persons who may participate as Lenders of the requested increase in Revolving Commitments (it being understood that the Borrower shall have no obligation to seek a Revolving Commitment Increase from any existing Lenders); *provided* that (i) each applicable Lender or additional financial institution may elect or decline, in its sole discretion, to have its Revolving Commitment increased in connection with any requested Revolving Commitment Increase, it being understood that no Lender shall be obligated to increase its Revolving Commitment unless it, in its sole discretion, so agrees; (ii) if commitments from additional financial institutions are obtained in connection with the Revolving Commitment Increase, any Person or Persons providing such commitment shall be subject to the written consent of the Administrative Agent, the Swingline Lender and the Issuing Banks (such consent not to be unreasonably withheld, delayed or conditioned), if such consent would be required pursuant to Section 13.04; (iii) [reserved]; (iv) in no event shall a Defaulting Lender be entitled to participate in such Revolving Commitment Increase; and (v) no Issuing Bank shall be required to act in such capacity under the Revolving Commitment Increase without its prior written consent. In the event that any Lender or other Person agrees to participate in any Revolving Commitment Increase (each an "Increase Loan Lender"), such Revolving Commitment Increase

shall become effective on such date as shall be mutually agreed upon by the Increase Loan Lenders and the Borrower, which date shall be as soon as practicable after the date of receipt of the Revolving Commitment Increase Notice (such date, the "Increase Date"); *provided* that the establishment of such Revolving Commitment Increase shall be subject to the satisfaction of each of the following conditions: (1) subject to Section 1.05, no Event of Default shall have occurred and be continuing or would exist after giving effect thereto; (2) the representations and warranties made by the Credit Parties under each of the Credit Documents shall be true in all material respects, *provided* that, solely with respect to Revolving Loans made under the Revolving Commitment Increases that are used to effect or finance a Permitted Acquisition or Investments permitted under this Agreement, the Borrower shall have the option of making any representations and warranties under the Credit Documents (other than any Specified Representations) and determinations as to the availability of any "basket-carveouts" under Article 10 effective as of the date of entering the definitive agreement for such Permitted Acquisition or such Investment in accordance with the Limited Condition Transaction provisions set forth in Section 1.05; (3) the Revolving Commitment Increase shall be effected pursuant to one or more joinder agreements executed and delivered by the Borrower, the Administrative Agent, and the Increase Loan Lenders, each of which shall be reasonably satisfactory to the Borrower, the Administrative Agent, and the Increase Loan Lenders; (4) the Credit Parties shall execute and deliver or cause to be executed and delivered to the Administrative Agent such amendments to the Credit Documents, legal opinions and other documents as the Administrative Agent may reasonably request in connection with any such transaction, which amendments, legal opinions and other documents shall be reasonably satisfactory to the Administrative Agent; and (5) the Borrower shall have paid to the Administrative Agent and the Lenders such additional fees as may be agreed to be paid by the Borrower in connection therewith.

(c) On the Increase Date, upon fulfillment of the conditions set forth in this Section 2.15, (i) the Administrative Agent shall effect a settlement of all outstanding Revolving Loans among the Lenders that will reflect the adjustments to the Revolving Commitments of the applicable Lenders as a result of the Revolving Commitment Increase, (ii) the Administrative Agent shall notify the Lenders and Credit Parties of the occurrence of the Revolving Commitment Increase to be effected on the Increase Date, (iii) Schedule 2.01 shall be deemed modified to reflect the revised Revolving Commitments of the affected Lenders and (iv) Notes will be issued, at the expense of the Borrower, to any Lender participating in the Revolving Commitment Increase and requesting a Note.

(d) The terms and provisions of the Revolving Commitment Increase shall be identical to the Revolving Loans and the Revolving Commitments (other than (A) any terms and provisions that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Revolving Commitment Increase (immediately prior to the establishment of such Revolving Commitment Increase), (B) subject to clause (i) below, the maturity date and (C) arranger, upfront fees and other similar fees) and, for purposes of this Agreement and the other Credit Documents, all Revolving Loans made under the Revolving Commitment Increase shall be deemed to be Revolving Loans. Without limiting the generality of the foregoing, (i) in no event shall the final maturity date of any Revolving Loans under a Revolving Commitment Increase at the time of establishment thereof be earlier than the Latest Maturity Date that is in effect on the effective date of the Revolving Commitment Increase (immediately prior to the establishment of such Revolving Commitment Increase), (ii) the Revolving Commitment Increase shall require no scheduled amortization or mandatory commitment reduction prior to the Latest Maturity Date that is in effect on the effective date of the Revolving Commitment Increase (immediately prior to the establishment of such Revolving Commitment Increase), (iii) the rate of interest applicable to the Revolving Commitment Increase shall be the same as the rate of interest applicable to the existing Revolving Loans, (iv) unused line fees applicable to the Revolving Commitment Increase shall be calculated using the same Unused Line Fee Rates applicable to the existing Revolving Loans, (v) the Revolving Commitment Increase shall share ratably in any mandatory prepayments of the Revolving Loans, (vi) after giving effect to such Revolving Commitment Increases, the Pro Rata Percentage of the Revolving Commitments of each Lender may be adjusted to give effect to the total Revolving Commitment as increased by such Revolving Commitment Increase and (vii) the Revolving Commitment Increase shall rank *pari passu* in right of payment and security with the existing Revolving Loans and no Revolving Commitment Increase shall have borrowers or guarantors that are not Credit Parties. Each joinder agreement and any amendment to any Credit Document requested by the Administrative Agent in connection with the establishment of the Revolving Commitment Increase may, without the consent of any of the Lenders, effect such amendments to this Agreement (an "Incremental Revolving Commitment Amendment") and the other Credit Documents as may be reasonably necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15.

Section 2.16 [Reserved].

Section 2.17 Overadvances. If the aggregate Revolving Loans outstanding exceed the Line Cap (an "Overadvance") at any time, the excess amount shall be payable by the Borrower on demand (or, if such Overadvance is due to the imposition of new Reserves, a change in the methodology of calculating existing Reserves, a change in eligibility criteria or standards or the occurrence of a Revaluation

Date, within three Business Days following notice from the Administrative Agent) to the Administrative Agent, but all such Revolving Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Credit Documents. The Administrative Agent may require the Lenders to honor requests for Overadvance Loans and to forbear from requiring the Borrower to cure an Overadvance, (a) when no other Event of Default is known to the Administrative Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required) and (ii) the aggregate amount of all Overadvances and Protective Advances is not known by the Administrative Agent to exceed 10% of the Borrowing Base, (b) regardless of whether an Event of Default exists, if the Administrative Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance (i) is not increased by more than $500,000, and (ii) does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the aggregate outstanding Revolving Loans and LC Obligations to exceed the aggregate Revolving Commitments. The making of any Overadvance shall not create nor constitute a Default or Event of Default; it being understood that the making or continuance of an Overadvance shall not constitute a waiver by the Administrative Agent or the Lenders of the then existing Event of Default. In no event shall the Borrower or other Credit Party be permitted to require any Overadvance Loan to be made.

Section 2.18 Protective Advances. The Administrative Agent shall be authorized, in its discretion, following notice to and consultation with the Borrower, at any time, to make Base Rate Loans ("Protective Advances") (a) in an aggregate amount, together with the aggregate amount of all Overadvance Loans, not to exceed 10% of the Borrowing Base, if the Administrative Agent deems such Protective Advances necessary or desirable to preserve and protect the Collateral, or to enhance the collectability or repayment of the Obligations; or (b) to pay any other amounts chargeable to Credit Parties under any Credit Documents, including costs, fees and expenses; *provided* that, the aggregate amount of outstanding Protective Advances *plus* the outstanding amount of Revolving Loans and LC Obligations shall not exceed the aggregate Revolving Commitments. Each Lender shall participate in each Protective Advance in accordance with its Pro Rata Percentage. Required Lenders may at any time revoke the Administrative Agent's authority to make further Protective Advances under clause (a) by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. The Administrative Agent may use the proceeds of such Protective Advances to (a) protect, insure, maintain or realize upon any Collateral; or (b) defend or maintain the validity or priority of the Administrative Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien; *provided* that the Administrative Agent shall use reasonable efforts to notify the Borrower after paying any such amount or taking any such action and shall not make payment of any item that is being Properly Contested.

Section 2.19 Extended Loans.

(a) Notwithstanding anything to the contrary in this Agreement, subject to the terms of this Section 2.19, the Borrower may at any time and from time to time when no Event of Default then exists request that all or a portion of the then-existing Revolving Loans (the "Existing Revolving Loans"), together with any related outstandings, be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or any portion of the principal amount (and related outstandings) of such Revolving Loans (any such Revolving Loans which have been so converted, "Extended Revolving Loans") and to provide for other terms consistent with this Section 2.19. In order to establish any Extended Revolving Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders) (each, an "Extension Request") setting forth the proposed terms of the Extended Revolving Loans to be established, which shall (x) be identical as offered to each Lender (including as to the proposed interest rates and fees payable) and (y) be identical to the Existing Revolving Loans, except that: (i) repayments of principal of the Extended Revolving Loans may be delayed to later dates than the Initial Maturity Date; (ii) the effective yield with respect to the Extended Revolving Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the effective yield for the Existing Revolving Loans to the extent provided in the applicable Extension Amendment; and (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Loans); *provided*, *however*, that (A) in no event shall the final maturity date of any Extended Revolving Loans at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Loans hereunder that is in effect on the effective date of the Extensions Amendment (immediately prior to the establishment of such Extended Revolving Loans) and (B) the Weighted Average Life to Maturity of any Extended Revolving Loans at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of any other Revolving Loans then outstanding. Any Extended Revolving Loans converted pursuant to any Extension Request shall be designated a series (each, an "Extension Series") of Extended Revolving Loans, as applicable, for all purposes of this Agreement;

provided that any Extended Revolving Loans converted from Existing Revolving Loans may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Revolving Loans.

(b) With respect to any Extended Revolving Loans, subject to the provisions of Sections 2.12(e) and 2.13(o), to the extent dealing with Swingline Loans and Letters of Credit which mature or expire after a Maturity Date, all Swingline Loans and Letters of Credit shall be participated in on a *pro rata* basis by all Lenders with Revolving Commitments and/or Extended Revolving Loan Commitments in accordance with their Pro Rata Share of the Aggregate Commitments under each Extension Series of Extended Revolving Loans, and the Existing Revolving Loans, (and, except as provided in Sections 2.12(e) and 2.13(o), without giving effect to changes thereto on such Maturity Date with respect to Swingline Loans and Letters of Credit theretofore incurred or issued) and all borrowings under the Aggregate Commitments and repayments thereunder shall be made on a *pro rata* basis (except for (x) payments of interest and fees at different rates on Extended Revolving Loan Commitments (and related outstandings) and (y) repayments required upon any Maturity Date of any Revolving Commitments or Extended Revolving Loan Commitments).

(c) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days prior to the date on which Lenders under the Existing Revolving Loans, are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19. No Lender shall have any obligation to agree to have any of its Existing Revolving Loans converted into Extended Revolving Loans pursuant to any Extension Request. Any Lender (each, an "Extending Lender") wishing to have all or a portion of its Existing Revolving Loans subject to such Extension Request converted into Extended Revolving Loans shall notify the Administrative Agent (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Existing Revolving Loans which it has elected to request be converted into Extended Revolving Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). Any Lender that does not respond to the Extension Request on or prior to the date specified therein shall be deemed to have rejected such Extension Request. In the event that the aggregate principal amount of Existing Revolving Loans subject to Extension Elections relating to a particular Extension Request exceeds the amount of Extended Revolving Loans requested pursuant to such Extension Request, Revolving Loans subject to such Extension Elections shall be converted to Extended Revolving Loans, on a *pro rata* basis based on the aggregate principal amount of Revolving Loans included in each such Extension Elections or to the extent such option is expressly set forth in the respective Extension Request, the Borrower shall have the option to increase the amount of Extended Revolving Loans so that such excess does not exist.

(d) Extended Revolving Loans shall be established pursuant to an amendment (each, an "Extension Amendment") to this Agreement among the Borrower, the Administrative Agent, each Extending Lender providing Extended Revolving Loans thereunder which shall be consistent with the provisions set forth in Section 2.19(a) above and each Issuing Bank (solely to the extent that such Extension Amendment would result in the extension of such Issuing Bank's obligations with respect to Letters of Credit) (but which shall not require the consent of any other Lender). The Administrative Agent shall promptly notify each relevant Lender as to the effectiveness of each Extension Amendment.

(e) With respect to any Extension Amendment consummated by the Borrower pursuant to this Section 2.19, (i) such Extension Amendment shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement, (ii) with respect to Extended Revolving Loan Commitments, if the aggregate amount extended is less than (A) the LC Commitment, the LC Commitment shall be reduced upon the date that is five (5) Business Days prior to the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Loans) (to the extent needed so that the LC Commitment does not exceed the aggregate Revolving Commitment which would be in effect after the Maturity Date), and, if applicable, the Borrower shall Cash Collateralize obligations under any issued Letters of Credit in an amount equal to 102.00% of the stated amount of such Letters of Credit, or (B) the Swingline Commitment, the Swingline Commitment shall be reduced upon the date that is five (5) Business Days prior to such Latest Maturity Date (to the extent needed so that the Swingline Commitment does not exceed the aggregate Revolving Commitment which would be in effect after such Latest Maturity Date), and, if applicable, the Borrower shall prepay any outstanding Swingline Loans. The Administrative Agent and the Lenders hereby consent to each Extension Amendment and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Revolving Loan Commitments on such terms as may be set forth in the Extension Request) and hereby waive the requirements of any provision of this Credit Agreement or any other Credit Document that may otherwise prohibit any Extension Amendment or any other transaction contemplated by this Section 2.19; *provided* that such consent shall not be deemed to be an acceptance of the Extension Request.

(f) Each of the parties hereto hereby agrees that this Agreement and the other Credit Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of any Extended Revolving Loans incurred pursuant thereto, (ii) establish new tranches or sub-tranches in respect of Revolving Commitments so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.19, and (iii) effect such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.19, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.19 and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrower unless and until it shall have received such advice or concurrence; *provided*, *however*, that whether or not there has been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders.

ARTICLE 3 Yield Protection, Illegality and Replacement of Lenders.

Section 3.01 Increased Costs, Illegality, etc.

(a) [Reserved].

(b) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuing Bank;

(ii) impose on any Lender, Issuing Bank, the London interbank market or Canadian bankers' acceptances market any other condition, cost or expense (other than Taxes) affecting this Agreement, Loans made by such Lender or Letters of Credit issued by such Issuing Bank; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or issuing or participating in any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or the Administrative Agent, as the case may be, for such additional costs incurred or reduction suffered.

(c) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans or Letters of Credit made by such Lender or Issuing Bank, as applicable, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(d) If any Lender determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund LIBO Rate Loans or CDOR Rate Loans,

or to determine or charge interest rates based upon the LIBO Rate or CDOR 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 or Canadian Dollars in the Canadian bankers' acceptances market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue LIBO Rate Loans or CDOR Rate Loans, as applicable, or to convert Base Rate Loans to LIBO Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBO Rate Loans denominated in Dollars of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans or CDOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans or CDOR Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(e) A certificate of a Lender or the Administrative Agent setting forth the amount or amounts necessary to compensate such Lender or the Administrative Agent or its holding company, as the case may be, as specified in clause (b) or (c) of this Section 3.01, and certifying that it is the general practice and policy of such Lender to demand such compensation from similarly situated borrowers in similar circumstances at such time to the extent it is legally permitted to do so, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Administrative Agent, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(f) Failure or delay on the part of any Lender or the Administrative Agent to demand compensation pursuant to this Section 3.01 shall not constitute a waiver of such Lender's or the Administrative Agent's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or the Administrative Agent pursuant to this Section 3.01 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Administrative Agent, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Administrative Agent's intention to claim compensation therefor; *provided*, *further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 3.02 Compensation. The Borrower agrees to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation and the calculation of the amount of such compensation; it being understood that no Lender shall be required to disclose (i) any confidential or price sensitive information, or (ii) any other information, to the extent prohibited by any Requirement of Law), for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBO Rate Loans or CDOR Rate Loans but excluding loss of anticipated profits and without giving effect to the minimum "LIBO Rate" or CDOR Rate) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBO Rate Loans or CDOR Rate Loans, as applicable, does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation; (ii) if any prepayment or repayment (including any termination or reduction of Commitments made pursuant to Section 2.07 or as a result of an acceleration of the Loans pursuant to Article 11) or conversion of any of its LIBO Rate Loans or CDOR Rate Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBO Rate Loans or CDOR Rate Loans is not made on any date specified in a notice of termination or reduction given by the Borrower; or (iv) as a consequence of any other default by the Borrower to repay its LIBO Rate Loans or CDOR Rate Loans when required by the terms of this Agreement or any Note held by such Lender.

Section 3.03 Change of Lending Office. Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 3.01(b), Section 3.01(c) or Section 5.01 with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event; *provided* that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 3.03 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Sections 3.01 and 5.01.

Section 3.04 Replacement of Lenders. (w) If any Lender becomes a Defaulting Lender, (x) upon the occurrence of an event giving rise to the operation of Section 3.01(a) or (b), Section 3.01(c) or Section 5.01 with respect to such Lender or (y) in the case of a refusal by a Lender to consent to proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section 13.12(b), the Borrower shall have the right to replace such Lender (the "Replaced Lender") with one or more other Eligible Transferees, none of whom shall constitute a Defaulting Lender at the time of such replacement (collectively, the "Replacement Lender") and each of whom shall be required to be reasonably acceptable to the Administrative Agent and each Issuing Bank (to the extent the Administrative Agent's and such Issuing Bank's consent would be required for an assignment to such Replacement Lender pursuant to Section 13.04); *provided* that (i) at the time of any replacement pursuant to this Section 3.04, the Replacement Lender shall enter into one or more Assignment and Assumptions pursuant to Section 13.04(b) (and with all fees payable pursuant to said Section 13.04(b) to be paid by the Replacement Lender and/or the Replaced Lender (as may be agreed to at such time by and among the Borrower, the Replacement Lender and the Replaced Lender)) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, the Replaced Lender and, in connection therewith, shall pay to the Replaced Lender in respect thereof an amount equal to the sum of (I) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the respective Replaced Lender and (II) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to Section 2.05, (ii) all obligations of the Borrower due and owing to the Replaced Lender at such time (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender concurrently with such replacement and (iii) in the case of any such replacement as a result of any Credit Party having become obligated to pay amounts described in Section 3.01(a) or (b), Section 3.01(c) or Section 5.01, such replacement would eliminate or reduce payments pursuant to Section 3.01(a) or (b), Section 3.01(c) or Section 5.01, as applicable, in the future. Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 3.04, the Administrative Agent shall be entitled (but not obligated) and authorized to execute an Assignment and Assumption on behalf of such Replaced Lender, and any such Assignment and Assumption so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this Section 3.04 and Section 13.04. Upon the execution of the respective Assignment and Assumption, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register pursuant to Section 13.15 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the Borrower, (x) the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including, without limitation, Sections 3.01, 3.02, 5.01, 12.07 and 13.01), which shall survive as to such Replaced Lender with respect to actions or occurrences prior to it ceasing to be a Lender hereunder. In connection with any replacement of Lenders pursuant to, and as contemplated by, this Section 3.04, the Borrower hereby irrevocably authorizes Holdings to take all necessary action, in the name of the Borrower, as described above in this Section 3.04 in order to effect the replacement of the respective Lender or Lenders in accordance with the preceding provisions of this Section 3.04.

Section 3.05 Successor Rate.

(a) If in connection with any request for a LIBO Rate Loan, CDOR Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank LIBO Rate market for the applicable amount and Interest Period of such LIBO Rate Loan or Canadian bankers' acceptances are not being offered to banks in the Canadian interbank market for the applicable amount and Interest Period of such CDOR Rate Loan, or (B) (x) adequate and reasonable means do not exist for determining the LIBO Rate or CDOR Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan or CDOR Rate Loan or in connection with an existing or proposed Base Rate Loan and (y) the circumstances described in Section 3.05(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the LIBO Rate or CDOR Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan or CDOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBO Rate Loan or CDOR Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans or CDOR Rate Loans shall be suspended (to the extent of the affected LIBO Rate Loans, CDOR Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the LIBO Rate component of the Base Rate, the utilization of the LIBO Rate component in determining the Base Rate shall be suspended until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.05(a), until the Administrative Agent upon 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 (to the extent of the affected LIBO Rate Loans or Interest Periods) or CDOR Rate Loans (to the extent of the affected CDOR Rate Loans or Interest Periods), as applicable or, failing that, will be deemed to have converted such request into a request for a Borrowing of LIBO Rate Loans or CDOR Rate Loans, as applicable in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.05(a), the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.05(a), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Credit Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, *provided* that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the "Scheduled Unavailability Date"), or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative, or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.05, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, in the case of clauses (i) through (iii) above, on a date and time determined by the Administrative Agent (any such date, the "LIBOR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur within a reasonable period of time after the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Credit Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document (the "LIBOR Successor Rate"; and any such rate before giving effect to the Related Adjustment, the "Pre-Adjustment Successor Rate"):

(x) Term SOFR *plus* the Related Adjustment; and

(y) SOFR *plus* the Related Adjustment;

and in the case of clause (iv) above, the Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Credit Document in accordance with the definition of "LIBOR Successor Rate" and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;

provided that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR *plus* the relevant Related Adjustment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate.

Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than 0%, the LIBOR Successor Rate will be deemed to be 0% for the purposes of this Agreement and the other Credit Documents.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

If the events or circumstances of the type described in Sections 3.05(c)(i) through (iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of "LIBOR Successor Rate."

(d) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Sections 3.05(c)(i) through (iii), as applicable, if the Administrative Agent determines that none of the LIBOR Successor Rates is available on or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 3.05(c)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Sections 3.05(c)(i) through (iii) have occurred with respect to the LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 3.05 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

(e) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clause (c) or (d) of this Section 3.05 and the circumstances under clause (a)(i) or (a)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify

the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended, (to the extent of the affected LIBO Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) the LIBO Rate component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with clause (a) or (b). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans (to the extent of the affected LIBO Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

ARTICLE 4 [Reserved].

ARTICLE 5 Taxes.

Section 5.01 Net Payments.

(a) All payments by or on account of any obligation of the Credit Parties under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by any applicable withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.01) the applicable Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with all applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Credit Parties. The Credit Parties shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two duly executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two of whichever of the following is applicable:

(1) in the case of a Lender that is not a U.S. Person claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, duly executed original copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, duly executed original copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) duly executed original copies of IRS Form W-8ECI;

(3) in the case of a Lender that is not a U.S. Person claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit B-1 to the effect that such Lender that is not a U.S. Person is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code and that no payments under any Credit Documents are effectively connected with such Lender's conduct of a U.S. trade or business (a "U.S. Tax Compliance Certificate") and (y) duly executed original copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Lender that is not a U.S. Person is not the beneficial owner (for example, where such Lender is a partnership or a participating Lender), duly executed original copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit B-2 or Exhibit B-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if such Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit B-4 on behalf of such direct and indirect partner(s);

(C) any Lender that is not a U.S. Person shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Requirements of

Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(E) If the Administrative Agent is not a U.S. Person, the Administrative Agent shall deliver to the Borrower, on or prior to the date on which it becomes the Administrative Agent, (A) with respect to amounts received on its own account, a duly executed IRS Form W-8ECI and (B) with respect to amounts received on account of any Lender, a duly executed IRS Form W-8IMY certifying that it is either (x) a "qualified intermediary" and that it assumes primary withholding responsibility under Chapters 3 and 4 of the Code and primary IRS Form 1099 reporting and backup withholding responsibility for payments it receives for the account of others or (y) a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of a trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. Person with respect to such amounts for U.S. federal withholding tax purposes (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. Person with respect to such amounts as contemplated by Treasury Regulations Section 1.1441-1(b)(2)(iv)(A)). Notwithstanding anything to the contrary in this Section 5.01(e)(ii)(E), the Administrative Agent shall not be required to deliver any documentation pursuant to this Section 5.01(e)(ii)(E) that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall promptly update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligible to do so.

Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 5.01(e).

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.01 (including by the payment of additional amounts pursuant to this Section 5.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (f) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This clause (f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Survival. Each party's obligations under this Section 5.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

(h) For the avoidance of doubt, for purposes of this Section 5.01, the term "Lender" shall include any Issuing Bank and the Swingline Lender.

ARTICLE 6 Conditions Precedent to Credit Events on the Closing Date. The Administrative Agent, the Swingline Lender, the Issuing Banks and the Lenders shall not be required to fund any Revolving Loans or Swingline Loans, or arrange for the issuance of any Letters of Credit on the Closing Date, until the following conditions are satisfied or waived.

Section 6.01 Credit Documents. On the Closing Date, Holdings and the Borrower shall have executed and delivered to the Administrative Agent a counterpart of this Agreement.

Section 6.02 Indenture. On the Closing Date, Holdings, the Borrower and the other Subsidiaries of the Borrower party thereto shall have executed and delivered to the Administrative Agent an executed copy of the Secured Notes Indenture.

Section 6.03 Opinions of Counsel. On the Closing Date, the Administrative Agent shall have received from (i) Latham & Watkins LLP, special New York counsel to the Credit Parties and (ii) local counsel to the Credit Parties listed on Schedule 6.03 hereto, an opinion addressed to the Administrative Agent and each of the Lenders and dated the Closing Date in form and substance reasonably satisfactory to the Administrative Agent.

Section 6.04 Corporate Documents; Proceedings, etc.

(a) On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by a Responsible Officer of such Credit Party, and, where applicable in the case of the U.S. Credit Parties, attested to by a separate Responsible Officer of such U.S. Credit Party, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of the governing body of such Credit Party referred to in such certificate, and each of the foregoing shall be in customary form.

(b) The Administrative Agent shall have received good standing certificates (or equivalent evidence) and bring-down letters or facsimiles, if any, for the U.S. Credit Parties which the Administrative Agent reasonably may have requested, and in the case of a Canadian Credit Party, only to the extent such concept is applicable in such Canadian Credit Party's jurisdiction of incorporation, formation or organization.

Section 6.05 Acquisition. The Acquisition shall be consummated substantially concurrently with any initial funding of the Revolving Loans and/or the issuance (or release from escrow, if applicable) of the Secured Notes in accordance in all material respects with the Acquisition Agreement without waiver or amendment thereof that is, in the aggregate when taken as a whole, materially adverse to the interests of the Initial Lenders (including any reduction in the acquisition consideration that does not meet the criteria below) unless consented to by the Initial Lenders (such consent not to be unreasonably withheld, delayed or conditioned); it being understood that (w) no reduction in the acquisition consideration shall be deemed to be materially adverse to the interests of the Initial Lenders if such reduction is applied to reduce the Cash Equity Financing and the principal amount of the Secured Notes on a ratable basis, (x) no increase in the acquisition consideration shall be deemed to be materially adverse to the interests of the Initial Lenders if such increase is not funded with indebtedness for borrowed money or disqualified stock of Holdings or any of its subsidiaries (other than borrowings under this Agreement), (y) no modification to the acquisition consideration as a result of any purchase price adjustment or working capital adjustment expressly contemplated by the Acquisition Agreement as of the date thereof shall constitute a reduction or increase in the acquisition consideration and (z) the Initial Lenders shall be deemed to have consented to any waiver or amendment of the Acquisition Agreement if it shall have not affirmatively objected to any such waiver or amendment within three Business Days of receipt of written notice of such waiver or amendment.

Section 6.06 Equity Contribution and Rollover Financing. Substantially concurrently with the consummation of the Acquisition, (x) Platinum or its controlled affiliates will make, directly or indirectly, cash investments (in the form of common equity) in Holdings (the "Cash Equity Financing"), in an aggregate amount between $700,000,000 and $763,000,000 *plus* (i) up to an additional $100,000,000, to the extent that the Additional Equity Investment is less than $100,000,000 or (ii) such other greater amount at the joint discretion of Platinum and Holdings (the amount set forth in clause (i) or, if applicable, clause (ii), the "Additional Platinum Equity Financing") (the "Minimum Equity Amount") and (y) the Rollover Investors will rollover a portion of their equity interests in the Target in exchange for common equity in Holdings (the "Rollover Financing"); *provided* that after giving effects to the Transactions (including, among other things, the Rollover Financing, the equity interests of the Existing Investors and any Additional Equity Investment), Platinum shall own, directly or indirectly, at least 50.1% of the voting equity interests of Holdings in the aggregate on the Closing Date.

Section 6.07 Intercreditor Agreement. On the Closing Date, each Credit Party party thereto shall have executed and delivered an acknowledgment to the Intercreditor Agreement.

Section 6.08 Refinancing. The Refinancing shall have occurred, or shall occur substantially simultaneously with any initial funding of the Revolving Loans and/or the issuance (or release from escrow, if applicable) of the Secured Notes.

Section 6.09 Security Agreements. On the Closing Date, (i) each U.S. Credit Party shall have duly authorized, executed and delivered to the Collateral Agent the U.S. Security Agreement and (ii) each Canadian Credit Party shall have executed and delivered to the Collateral Agent the Canadian Security Agreement, in each case, covering all of such Credit Party's present and future Collateral referred to therein, and shall have delivered to the Collateral Agent:

(i) in respect of each Credit Party, proper financing statements (Form UCC-1, PPSA or the equivalent) authorized for filing under the UCC, the PPSA or other appropriate filing offices of each jurisdiction as may be necessary or, to the extent reasonably requested by the Administrative Agent reasonably in advance of the Closing Date, desirable to perfect the security interests purported to be created by the U.S. Security Agreement and the Canadian Security Agreement;

(ii) all of the Pledged Collateral, if any, referred to in the U.S. Security Documents and/or the Canadian Security Agreement and then owned by such Credit Party together with executed and undated endorsements for transfer in the case of Pledged Collateral constituting certificated securities, along with evidence that all other actions necessary to perfect (to the extent required by the U.S. Security Agreement or the Canadian Security Agreement) the security interests in Pledged Collateral purported to be created by the U.S. Security Agreement and/or the Canadian Security Agreement have been taken;

(iii) certified copies of a recent date of searches and requests for information or copies (including Form UCC-1), or equivalent customary reports as of a recent date, listing all effective financing statements or other Lien registrations that name such Credit Party as debtor and that are filed in the jurisdictions referred to in the Perfection Certificate, together with copies of such other financing statements or other Lien registrations that name such Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens);

(iv) [reserved];

(v) [reserved]; and

(vi) an executed Perfection Certificate;

provided that to the extent any Collateral is not able to be provided and/or perfected on the Closing Date after the use by Holdings, the Borrower and the Subsidiary Guarantors of commercially reasonable efforts without undue burden or expense, the provisions of this Section 6.09 shall be deemed to have been satisfied and the Credit Parties shall be required to provide such Collateral in accordance with the provisions set forth in Section 9.13 if, and only if, each applicable Credit Party shall have executed and delivered the applicable Security Documents and the Collateral Agent shall have a perfected security interest in all Collateral of the type for which perfection may be accomplished by filing a UCC and/or PPSA financing statement or possession of certificated securities of (x) the Borrower and (y) each of the Borrower's material Wholly-Owned Domestic Subsidiaries or wholly owned Canadian Subsidiaries (to the extent required by the Security Documents) that, in the case of any such certificated securities with respect to any Equity Interests of the Acquired Companies, have been received from the Acquired Companies.

Section 6.10 Guaranty Agreement. On the Closing Date, each Guarantor shall have executed and delivered the Guaranty Agreement substantially in the form of Exhibit H (as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time, the "Guaranty Agreement").

Section 6.11 Financial Statements; Pro Forma Balance Sheets; Projections. On or prior to the Closing Date, the Commitment Parties shall have received (i) the audited consolidated balance sheets and the related audited consolidated statements of income, consolidated statements of partners' equity and consolidated statements of cash flows of the Target as of and for the fiscal years ended December 31, 2018, December 31, 2019 and December 31, 2020 and for any fiscal year ended at least 90 days prior to the Closing Date (collectively, the "Audited Target Financial Statements"), (ii) the audited consolidated balance sheets and the related consolidated

statements of operations, comprehensive loss, cash flows and stockholders' deficit of the Borrower as of the end of and for the fiscal years ended December 31, 2017, December 31, 2018, December 31, 2019 and December 31, 2020 and for any other fiscal year ended at least 90 days prior to the Closing Date (collectively, the "Audited Borrower Financial Statements" and, together with the Audited Target Financial Statements, the "Financial Statements"), and (iii) a *pro forma* combined balance sheet and related *pro forma* combined statement of income of the Borrower and its consolidated Subsidiaries as of and for the 12-month period ending on the last day of the most recently completed four fiscal quarter period for which historical financial statements of the Borrower and the Target are provided pursuant to the foregoing, in each case of this clause (iii), prepared so as to give effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such other financial statements), which need not be prepared in compliance with Regulation S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting in connection with the Acquisition (the "Pro Forma Financial Statements").

Section 6.12 Solvency Certificate. On the Closing Date, the Administrative Agent shall have received a solvency certificate from the chief financial officer (or officer with equivalent duties) of the Borrower or Holdings substantially in the form of Exhibit I.

Section 6.13 Fees, etc.

All fees required to be paid by the Borrower on the Closing Date pursuant to the Fee Letter and, to the extent invoiced at least three Business Days prior to the Closing Date, all reasonable and documented out-of-pocket expenses required to be reimbursed by the Borrower to the Commitment Parties in connection with the Transactions pursuant to the Commitment Letter shall have been paid, in each case to the extent due (which amount may be offset against the proceeds from any Revolving Loan made on the Closing Date under this Agreement).

Section 6.14 Representations and Warranties. (a) The Acquisition Agreement Representations shall be true and correct to the extent required by the definition thereof and (b) the Specified Representations shall be true and correct in all material respects as of the Closing Date (*provided* that the foregoing materiality qualifier shall not be applicable to any representations qualified or modified by materiality; *provided*, *further*, that any "Material Adverse Effect" or "Material Adverse Change" or similar qualifier in any such Specified Representation shall, for purposes of this Section 6.14, be deemed to refer to "Closing Date Material Adverse Effect").

Section 6.15 Patriot Act. (i) The Credit Parties shall have provided or caused to be provided the documentation and other information to the Commitment Parties that they reasonably determine is required by United States and Canadian regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act, in each case, at least three Business Days prior to the Closing Date, to the extent that the Commitment Parties have reasonably requested in writing at least 10 Business Days prior to the Closing Date and (ii) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Administrative Agent and each Initial Lender that requests a Beneficial Ownership Certification shall have received, at least three Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

Section 6.16 Borrowing Notice. Prior to the making of any Revolving Loan on the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.02(c); *provided* that no such Notice of Borrowing shall include any representation or statement as to the absence (or existence) of any Default or Event of Default.

Section 6.17 Officer's Certificate. On the Closing Date, the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in Section 6.05, Section 6.14 and Section 6.18.

Section 6.18 Material Adverse Effect. Since December 3, 2020, no effect, event, development or change has occurred or arisen that, individually or in the aggregate, has had, or would reasonably be expected to have, a Closing Date Material Adverse Effect on the Acquired Companies.

Section 6.19 Borrowing Base Certificate. The Borrower shall have delivered to the Administrative Agent a Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent, which, for the avoidance of doubt, may state that the Borrowing Base is the Closing Date Borrowing Base.

ARTICLE 7 Conditions Precedent to All Credit Events. The obligation of each Lender and each Issuing Bank to make any Credit Extension (but limited, in the case of the initial Credit Extension on the Closing Date (if any), to Section 7.01 and Section 7.02 below) shall be subject to the satisfaction (or waiver) of each of the conditions precedent set forth below:

Section 7.01 Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Banks and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.13(b), or, in the case of a Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.12(b).

Section 7.02 Availability. The Availability Conditions on the proposed date of such Credit Extension shall be satisfied.

Section 7.03 No Default. No Default or Event of Default shall exist at the time of, or result from, such funding or issuance.

Section 7.04 Representations and Warranties. Each of the representations and warranties made by any Credit Party set forth in Article 8 hereof or in any other Credit Document shall be true and correct in all material respects (without duplication of any materiality standard set forth in any such representation or warranty) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such date (without duplication of any materiality standard set forth in any such representation or warranty). The acceptance of the benefits of each Credit Event after the Closing Date shall constitute a representation and warranty by the Borrower to the Administrative Agent and each of the Lenders that all the conditions specified in this Article 7 and applicable to such Credit Event are satisfied as of that time (other than such conditions which are subject to the discretion of the Administrative Agent or the Lenders).

ARTICLE 8 Representations, Warranties and Agreements. In order to induce the Lenders to enter into this Agreement and to make the Loans, the Borrower (and, solely with respect to Sections 8.01, 8.02, 8.03, 8.04, 8.11 and 8.16 and solely with respect to itself, Holdings), makes the following representations and warranties (limited, on the Closing Date, to the Specified Representations), in each case after giving effect to the Transaction.

Section 8.01 Organizational Status. Each of Holdings, the Borrower and each of the Restricted Subsidiaries (subject, in the case of clause (iii), Section 8.04) (i) is a duly organized, incorporated or formed and validly existing corporation, partnership, limited liability company, unlimited liability company or other applicable business entity, as the case may be, in good standing (to the extent such concept is applicable) under the laws of the jurisdiction of its organization, incorporation or formation, (ii) has the requisite corporate, partnership, limited liability company or other applicable business entity power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (iii) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership of its property or the conduct of its business requires such qualifications except for failures to be so qualified which, individually and in the aggregate would not reasonably be expected to have a Material Adverse Effect.

Section 8.02 Power and Authority; Enforceability. Each Credit Party has the corporate, partnership, limited liability company or other applicable business entity power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or other applicable business entity action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Each Credit Party has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable Debtor Relief Laws.

Section 8.03 No Violation. Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any Requirement of Law, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan

agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party is a party or by which it or any of its property or assets is bound or to which it may be subject (in the case of the preceding clauses (i) and (ii), other than in the case of any contravention, breach, default and/or conflict, in each case, that would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect) or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party.

Section 8.04 Approvals. Except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no applicable order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and (y) filings which are necessary to perfect the security interests created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

Section 8.05 Financial Statements; Financial Condition; Projections.

(a) (i) The consolidated balance sheets included in (x) the Audited Borrower Financial Statements as of the fiscal year ended December 31, 2020 and the related audited consolidated statements of operations, comprehensive loss, cash flows and stockholders' deficit of the Borrower included in the Audited Borrower Financial Statements for the fiscal year ended December 31, 2020 and (y) the Audited Target Financial Statements as of the fiscal year ended December 31, 2020 and the related audited consolidated statements of income, consolidated statements of partners' equity and consolidated statements of cash flows of the Target included in the Audited Target Financial Statements for the fiscal year ended December 31, 2020, in each case, present fairly in all material respects the consolidated financial position of the Borrower and its consolidated Subsidiaries and the Target, as applicable, with respect to such Audited Borrower Financial Statements or Audited Target Financial Statements, as the case may be, in each case, at the dates of such balance sheets and the consolidated results of the operations of the Borrower and the Target, as applicable, for the periods covered thereby. All of the foregoing historical financial statements have been audited by independent certified public accountants of recognized national standing and prepared in accordance with U.S. GAAP consistently applied.

(ii) [Reserved].

(iii) The *pro forma* combined balance sheet of the Borrower and its consolidated Subsidiaries furnished to the Commitment Parties pursuant to clause (iii) of Section 6.11 has been prepared as of December 31, 2020 as if the Transaction and the financing therefor had occurred on such date. The *pro forma* combined statement of income of the Borrower and its consolidated Subsidiaries furnished to the Commitment Parties pursuant to clause (iii) of Section 6.11 has been prepared for the four fiscal quarters ended December 31, 2020, as if the Transaction and the financing therefor had occurred on the first day of such four-quarter period.

(b) On the Closing Date, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent after giving effect to the consummation of the Transaction.

(c) The Projections have been prepared in good faith and are based on assumptions that were believed by the Borrower to be reasonable at the time delivered to the Administrative Agent (it being understood and agreed that the Projections are not to be viewed as facts, the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit Parties and their Restricted Subsidiaries, no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by the Projections may differ from projected results, and such differences may be material).

(d) Since the Closing Date there has been no change, event or occurrence that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 8.06 Litigation. There are no actions, suits, arbitrations or proceedings pending or, to the knowledge of the Borrower, threatened (i) with respect to the Transaction or any Credit Document or (ii) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 8.07 True and Complete Disclosure.

(a) All written information (other than information consisting of statements, estimates, forecasts and Projections, as to which no representation, warranty or covenant is made (except with respect to Projections to the extent set forth in Section 8.05(c) above)) that has been or will be made available to the Administrative Agent or any Lender by any Credit Party or any representative of a Credit Party at its direction and on its behalf in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein, when taken as a whole and after giving effect to all supplements thereto, is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in each case in light of the circumstances under which such statements are made, not materially misleading.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 6.15(ii), if applicable, is true and correct in all respects.

Section 8.08 Use of Proceeds; Margin Regulations.

(a) All proceeds of the Loans incurred on the Closing Date will be used by the Borrower (i) to fund certain original issue discount or upfront fees, (ii), to replace, backstop or cash collateralize any existing letters of credit or surety bonds for the account of the Borrower and its Subsidiaries and the Target and its Subsidiaries, (iii) for working capital needs and/or general corporate purposes in an amount not to exceed $50,000,000 and (iv) to finance the Transactions, including any purchase price or working capital adjustments payable under the Acquisition Agreement; *provided* that the amount described in clause (iv) shall not exceed $400,000,000.

(b) All proceeds of the Loans incurred after the Closing Date will be used for working capital needs and general corporate purposes, including the financing of capital expenditures, Permitted Acquisitions, and other permitted Investments, Dividends and any other purpose not prohibited hereunder.

(c) No part of any Credit Event (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(d) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and, to the knowledge of the Borrower, agents shall not use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to the Borrower and its Subsidiaries or, to the knowledge of the Borrower, any other party hereto.

Section 8.09 Tax Returns and Payments. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) the Borrower and each of its Restricted Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and reports for taxes (the "Returns") required to be filed by, or with respect to the income, properties or operations of, the Borrower and/or any of its Restricted Subsidiaries (including in its capacity as a withholding agent), (ii) the Returns accurately reflect in all material respects all liability for Taxes of the Borrower and its Restricted Subsidiaries for the periods covered thereby, and (iii) the Borrower and each of its Restricted Subsidiaries have paid all Taxes due and payable by them (including in its capacity as a withholding agent), other than those that are being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Borrower and its Restricted Subsidiaries in accordance with U.S. GAAP. There is no action, suit, proceeding, audit or claim now pending and, to the knowledge of the Borrower, there is no action, suit, proceeding, audit, claim, threatened in writing by any authority or ongoing investigation by any authority, in each case, regarding any Taxes relating to the Borrower or any of its Restricted Subsidiaries that is reasonably likely to be adversely determined, and, if adversely determined, would be reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 8.10 ERISA.

(a) No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service, is in the form of a prototype document that is the subject of a favorable opinion letter or has time remaining under applicable law to apply for a determination or opinion letter or to make any amendments necessary to obtain a favorable determination or opinion letter.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower or any Restricted Subsidiary of the Borrower, threatened, which would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(d) The Borrower, any Restricted Subsidiary of the Borrower and, to the knowledge of the Borrower, any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(e) Canadian Pension Plans. Except as individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect, (i) each Canadian Pension Plan is, and has been, established, registered, funded, administered and invested in compliance with the terms of such plan (including the terms of any documents in respect of such plan), all applicable laws and any collective agreements, as applicable, (ii) no Canadian Pension Event has occurred and (iii) all employer payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan by a Credit Party have been paid by each such Credit Party in a timely fashion in accordance with the terms thereof, any funding agreement and all applicable laws. No Canadian Pension Plan is a Canadian Defined Benefit Pension Plan as of the Closing Date. No Lien has arisen in respect of any Credit Party in connection with any Canadian Pension Plan (save for contribution amounts not yet due).

Section 8.11 The Security Documents. The provisions of the Security Documents are or will be effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest (except to the extent that the enforceability thereof may be limited by applicable Debtor Relief Laws) in all right, title and interest of the Credit Parties in the Collateral specified therein in which a security interest can be created under applicable law, and (1) in the case of the U.S. Security Documents and U.S. Collateral described therein, upon (i) the timely and proper filing of financing statements listing each applicable Credit Party, as a debtor, and the Collateral Agent, as secured party, in the secretary of state's office (or other similar governmental entity) of the jurisdiction of organization of such Credit Party, (ii) the receipt by the Collateral Agent of all Instruments, Chattel Paper and certificated pledged Equity Interests that constitute "securities" governed by Article 8 of the New York UCC, in each case constituting Collateral in suitable form for transfer by delivery or accompanied by instruments of transfer or assignment duly executed in blank, (iii) sufficient identification of commercial tort claims (as applicable), (iv) execution of a control agreement establishing the Collateral Agent's "control" (within the meaning of the New York UCC) with respect to any deposit account, (v) the recordation of the Patent Security Agreement, if applicable, and the Trademark Security Agreement, if applicable, in the respective form attached to the U.S. Security Agreement, in each case in the United States Patent and Trademark Office, (vi) the recordation of the Copyright Security Agreement in U.S. Copyrights, if applicable, in the form attached to the U.S. Security Agreement with the United States Copyright Office, and (vii) the timely and proper notation of the Collateral Agent's Lien on the original certificates of title with respect to Titled Goods owned as of the Closing Date, the Collateral Agent, for the benefit of the Secured Creditors, has (to the extent provided in the U.S. Security Documents) a fully perfected security interest in all right, title and interest in all of the U.S. Collateral, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions, and (2) in the case of the Canadian Security Documents and Canadian Collateral described therein, upon (i) the timely and proper filings of PPSA financing statements listing each applicable Credit Party, as a debtor, and the Collateral Agent, as secured party, in the jurisdiction of organization of such Credit Party, the jurisdiction of the chief executive office of such Credit Party (or jurisdiction of the registered office of any Credit Party formed under the federal laws of Canada) and any province or territory where tangible personal property constituting Canadian Collateral included in the Borrowing Base is located, (ii) receipt by the Collateral Agent of all instruments, chattel paper and securities that are certificated constituting Canadian

Collateral in suitable form for transfer by delivery or accompanied by instruments of transfer or assignment duly executed in blank and (iii) the execution of the applicable Intellectual Property Security Agreements in the forms attached to the Canadian Security Agreement and filing of same in the Canadian Intellectual Property Office, the Collateral Agent, for the benefit of the applicable Secured Creditors, has (to the extent provided in the Canadian Security Documents) a fully perfected security interest in all right, title and interest in all of the Canadian Collateral, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

Section 8.12 Ownership of Property; Real Property.

(a) Each of the Borrower and each of its Restricted Subsidiaries has good and marketable title or valid leasehold interest in the case of Real Property, and good and valid title in the case of tangible personal property, to all material tangible properties owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 8.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement), free and clear of all Liens, other than Permitted Liens, except where the failure to have such title or interests would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the use or operation of such Real Property or personal property necessary for the ordinary conduct of the Borrower's business, taken as a whole.

(b) As of the Closing Date, Schedule 8.12(b) hereto contains a true and complete list of all vehicles and other Rental Equipment known by the Borrower and its Restricted Subsidiaries after due inquiry to be (x) Certificated Rental Equipment or (y) subject to a Floor Plan Financing, with a description of each such vehicle or equipment, including to the extent known by the Borrower and its Restricted Subsidiaries after due inquiry, its vehicle identification number (if applicable), make, model, model year, purchase price and original equipment cost, and for vehicles or equipment subject to a Floor Plan Financing, including a description of such Floor Plan Financing.

Section 8.13 Capitalization. All outstanding shares of capital stock of the Borrower have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Borrower that may be imposed as a matter of law) and are owned by Holdings. The Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

Section 8.14 Subsidiaries. On and as of the Closing Date and after giving effect to the consummation of the Transaction, the Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 8.14. Schedule 8.14 correctly sets forth, as of the Closing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.

Section 8.15 Compliance with Statutes, Sanctions; Patriot Act; Anti-Corruption Laws.

(a) Each of the Borrower and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of (including any laws relating to terrorism, money laundering, embargoed Persons or the Patriot Act or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada)), and all applicable restrictions imposed by, governmental bodies or courts, domestic or foreign, in respect of the conduct of its business and the ownership of its property, except such noncompliances as, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect. The Borrower will not directly (or knowingly indirectly) use the proceeds of any Credit Extension to violate or engage in conduct that would result in a violation of any such applicable statutes, regulations, orders or restrictions referred to in the immediately preceding sentence.

(b) The Borrower has implemented and maintains in effect policies and procedures reasonably and appropriately designed to ensure material compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and, to the knowledge of the

Borrower, their respective employees, directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, Letter of Credit, use of proceeds or the Transaction itself will violate any Anti-Corruption Law or applicable Sanctions. Notwithstanding the foregoing, the representations given in this Section 8.15(b) and the covenants given in Section 9.05 shall not be made by nor apply to any Canadian Credit Party that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations or covenants would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.

Section 8.16 Investment Company Act. None of Holdings, the Borrower or any of its Restricted Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

Section 8.17 [Reserved].

Section 8.18 Environmental Matters. Except for any matters that, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect (a) the Borrower and each of its Restricted Subsidiaries are in compliance with all applicable Environmental Laws, and have obtained, maintained and are in compliance with any permits required for their operations pursuant to any such Environmental Laws, (b) there are no pending or, to the knowledge of any Credit Party, threatened Environmental Claims against the Borrower or any of its Restricted Subsidiaries or any Real Property currently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries and (c) to the knowledge of any Credit Party, there are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Borrower or any of its Restricted Subsidiaries or any Real Property currently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries that would be reasonably expected (i) to form the basis of an Environmental Claim against the Borrower or any of its Restricted Subsidiaries or (ii) to cause any Real Property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Borrower or any of its Restricted Subsidiaries under any applicable Environmental Law.

Section 8.19 Labor Relations. Except as set forth in Schedule 8.19 or except, in each case, to the extent the same has not, either individually or in the aggregate, had and would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Borrower or any of its Restricted Subsidiaries or, to the knowledge of the Borrower, threatened against the Borrower or any of its Restricted Subsidiaries, (b) to the knowledge of the Borrower, there are no questions concerning union representation with respect to the Borrower or any of its Restricted Subsidiaries, (c) the hours worked by and payments made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters and (d) to the knowledge of the Borrower, no wage and hour department investigation has been made of the Borrower or any of its Restricted Subsidiaries.

Section 8.20 Intellectual Property. Each of the Borrower and each of its Restricted Subsidiaries owns or has the right to use all the patents, industrial designs, trademarks, domain names, service marks, trade names, copyrights, inventions, trade secrets, formulas, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) (collectively, "Intellectual Property"), necessary for the present conduct of its business, without any known conflict with the Intellectual Property rights of others, except for such failures to own or have the right to use and/or conflicts as would not reasonably be expected to have, a Material Adverse Effect.

Section 8.21 [Reserved].

Section 8.22 Affected Financial Institutions. No Credit Party is an Affected Financial Institution.

Section 8.23 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, the material Parts Inventory reflected therein as eligible for inclusion in the Borrowing Base is Eligible Parts Inventory and the material Fleet Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Fleet Inventory.

ARTICLE 9 Affirmative Covenants. The Borrower on behalf of itself and each of its Restricted Subsidiaries, as applicable, hereby covenants and agrees that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations, except to the extent then due and payable and then entitled to payment in accordance with Section 11.11), or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank):

Section 9.01 Information Covenants. The Borrower will furnish to the Administrative Agent for distribution to each Lender, including each Lender's Public-Siders except as otherwise provided below:

(a) Quarterly Financial Statements. Within 45 days (or 60 days in the case of the first three fiscal quarters ending after the Closing Date for which delivery is required hereunder) after the close of each of the first three quarterly accounting periods in each fiscal year of the Borrower, in each case, ending after the Closing Date, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of operations and comprehensive income (loss) and retained earnings and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case, beginning with the fiscal quarter ending June 30, 2022, setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year, all of which shall be certified by a Responsible Officer of the Borrower that they fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) a management's discussion and analysis of the important operational and financial developments during such quarterly accounting period.

(b) Annual Financial Statements. Within 90 days (or 120 days for the first fiscal year ending after the Closing Date) after the close of each fiscal year of the Borrower, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of operations and comprehensive income (loss) and retained earnings and statement of cash flows for such fiscal year and, beginning with the fiscal year ending December 31, 2022, setting forth comparative figures for the preceding fiscal year and certified, in the case of consolidated financial statements, by Deloitte & Touche LLP or any other independent certified public accountants of recognized national standing, together with an opinion of such accounting firm (which opinion shall be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (except for qualifications, exceptions or explanatory paragraphs for a change in accounting principles with which such accountants concur and which shall have been disclosed in the notes to the financial statements or other than as a result of, or with respect to, (A) an upcoming maturity date under this Agreement or the Secured Notes Indenture, (B) any potential inability to satisfy any financial covenant set forth in Section 10.11, on a future date or in a future period or (C) the activities, operations, financial results, assets or liability of any Unrestricted Subsidiary) to the effect such statements fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Borrower and its Subsidiaries as of the date indicated and the results of their operations for the periods indicated, and (ii) a management's discussion and analysis of the important operational and financial developments during such fiscal year.

(c) Notwithstanding the foregoing, the obligations referred to in Sections 9.01(a) and 9.01(b) above and Section 9.01(d) below may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of (I) any Parent Company, (II) Holdings or any successor of Holdings or (III) any Wholly-Owned Restricted Subsidiary of the Borrower that, together with its consolidated Restricted Subsidiaries, constitutes substantially all of the assets of the Borrower and its consolidated Subsidiaries (a "Qualified Reporting Subsidiary") or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 9.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a Parent Company, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by, or the Borrower shall separately deliver within the applicable time periods set forth in Sections 9.01(a) and 9.01(b) above and Section 9.01(d) below, consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand, (2) to the extent such information relates to a Qualified Reporting Subsidiary such

information is accompanied by, or the Borrower shall separately deliver within the applicable time periods set forth in Sections 9.01(a) and 9.01(b) above and Section 9.01(d) below, consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Qualified Reporting Subsidiary, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (3) to the extent such information is in lieu of information required to be provided under Section 9.01(a) (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 independent certified public accountants of recognized national 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 be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of, or with respect to, (x) an upcoming maturity date under this Agreement or the Secured Notes Indenture, (y) any potential inability to satisfy any financial maintenance covenant set forth in Section 10.11 on a future date or in a future period or (z) the activities, operations, financial results, assets or liability of any Unrestricted Subsidiary). To the extent the SEC has granted the ability to extend any financial statement reporting deadline generally to all non-accelerated filers, including pursuant to Rule 12b-25 (but only to the extent the Borrower, Holdings, any Parent Company or a Qualified Reporting Subsidiary has complied with the filing and other requirements of Rule 12b-25 that would have been required if the Borrower, Holdings, any Parent Company or a Qualified Reporting Subsidiary were a non-accelerated filer by posting any such required filings (or filings substantially similar to what Rule 12b-25 would require) to the Administrative Agent), (the "Extended SEC Reporting Deadline") and such Extended SEC Reporting Deadline would be later than the deadline for delivery of the corresponding financial statements or forecasts of the Borrower pursuant to Sections 9.01(a) and 9.01(b) above and Section 9.01(d) below (the "Section 9.01 Reporting Deadline"), then the applicable Section 9.01 Reporting Deadline shall, if consented to by the Administrative Agent, be deemed to be extended to the date of the Extended SEC Reporting Deadline (this proviso, the "Reporting Extension Provision").

(d) Forecasts. Within 90 days (or 120 days for the first fiscal year ending after the Closing Date) after the close of each fiscal year of the Borrower, in each case, ending after the Closing Date, a reasonably detailed annual forecast (including projected statements of income, sources and uses of cash and balance sheets for the Borrower and its Subsidiaries on a consolidated basis), prepared on a quarter-by-quarter basis for such fiscal year and including a discussion of the principal assumptions upon which such forecast is based (it being agreed that such annual forecasts shall not be provided to Public-Siders).

(e) Officer's Certificates. No later than five days after the time of the delivery of the Section 9.01 Financials, a compliance certificate from a Responsible Officer of the Borrower substantially in the form of Exhibit J, certifying on behalf of the Borrower that, to such Responsible Officer's knowledge, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall:

(i) solely to the extent then subject to Section 10.11, set forth the reasonably detailed calculations with respect to the Consolidated Fixed Charge Coverage Ratio for such period;

(ii) certify that there have been no changes to the information provided in the Beneficial Ownership Certification delivered to any Lender that would result in a change to the list of beneficial owners identified in any such certification, in each case since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this clause (ii) or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (ii), solely to the extent such changes would result in a change to the list of beneficial owners identified in any such certification),

(iii) certify that there have been no changes to the list of Specified Floor Plan Companies since the later of the Closing Date or the date of the most recent updated list delivered pursuant to this clause (iii), or if there have been any such changes, an updated list of Specified Floor Plan Companies;

(iv) if delivered with the financial statements required by Sections 9.01(a) and 9.01(b) for any fiscal quarter ending on or after June 30, 2021, provide a true and complete list as of the date of delivery of such compliance certificate or confirmation that there has been no change in such information since the later of the Closing Date or the date of the last such list, identifying all vehicles (including any such vehicle that has been acquired) known by the Borrower and its Restricted Subsidiaries after due inquiry to be Certificated Rental Equipment and providing, for

each such vehicle, to the extent known by the Borrower and its Restricted Subsidiaries after due inquiry, its vehicle identification number (if applicable), make, model, model year, purchase price and original equipment cost;

(v) if delivered with the financial statements required by Section 9.01(b) for any fiscal year ending on or after December 31, 2021, provide a true and complete list as of the date of delivery of such compliance certificate or confirmation that there has been no change in such information since the later of the Closing Date or the date of the last such list, identifying all vehicles (including any such vehicle that has been acquired) known by the Borrower and its Restricted Subsidiaries after due inquiry to be subject to a Floor Plan Financing, with a description of each such vehicle, including to the extent known by the Borrower and its Restricted Subsidiaries after due inquiry, its vehicle identification number (if applicable), make, model, model year, purchase price and original equipment cost, as well as a description of such Floor Plan Financing; *provided*, that upon the Administrative Agent's request, the information required by this clause (v) must be delivered quarterly in connection with delivery of the financial statements required by Section 9.01(a); and

(vi) if delivered with the financial statements required by Section 9.01(b) for any fiscal year ending on or after December 31, 2021, certify that there have been no changes to Schedules 1(a), 2(b), 5, 6, 7(a), 7(b), 7(c), 8 and 9 of the Perfection Certificate, in each case since the Closing Date or, if later, since the date of the most recent certification delivered pursuant to this clause (vi), or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (vi), only to the extent such changes are required to be reported to the Collateral Agent pursuant to the terms of such Security Documents).

(f) Notice of Default, Litigation and Material Adverse Effect. Promptly after any Responsible Officer of the Borrower obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under (A) the Secured Notes Indenture or any refinancing thereof, (B) Permitted Junior Debt or other Indebtedness constituting debt for borrowed money, in each case of this clause (B), with a principal amount outstanding in excess of the Threshold Amount or (C) Floor Plan Financing in each case of this clause (C), with a principal amount outstanding in excess of $75,000,000, (ii) any litigation, or governmental investigation or proceeding pending against Holdings or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document, or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(g) Other Reports and Filings. Promptly after the sending, filing or delivery thereof, as applicable, copies of (i) all financial information, proxy materials and reports, if any, which Holdings or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or any successor thereto (the "SEC") and (ii) material notices received from, or reports or other information or material notices furnished to, holders of Indebtedness under, (A) the Secured Notes Indenture or any refinancing thereof or (B) Permitted Junior Debt or other Indebtedness constituting debt for borrowed money, in each case of this clause (B), with a principal amount outstanding in excess of the Threshold Amount (other than any regularly required monthly, quarterly or annual certificates or notices specific to the nature of a specific facility or the internal requirements of the specific debtholders under such facility (e.g., borrowing base certificates, monthly financial statements, etc.)) (including, for the avoidance of doubt, any notices relating to an actual or purported default or event of default thereunder and any notices to the extent the action or occurrence described therein would reasonably be expected to be materially adverse to the interests of the Lenders, but excluding any administrative notices or regular reporting requirements thereunder).

(h) Environmental Matters. Promptly after any Responsible Officer of the Borrower obtains knowledge thereof, notice of a pending or threatened Environmental Claim to the extent such Environmental Claim, either individually or when aggregated with all other such Environmental Claims, would reasonably be expected to have a Material Adverse Effect. All such notices provided pursuant to this Section 9.01(h) shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Borrower's or such Subsidiary's response thereto.

(i) Financial Statements of Unrestricted Subsidiaries. Simultaneously with the delivery of each set of Section 9.01 Financials, the related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

(j) [Reserved].

(k) Other Information. From time to time, (x) such other information or documents (financial or otherwise) with respect to the Borrower or any of its Restricted Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request and (y) information and documentation reasonably requested by the Administrative Agent or any Lender necessary 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. Notwithstanding the foregoing, neither the Borrower nor any of its Restricted Subsidiaries will be required to provide any information pursuant to this Section 9.01(k) to the extent that the provision thereof would violate any law, rule or regulation or result in the breach of any binding contractual obligation or the loss of any professional privilege; *provided* that in the event that the Borrower or any of its Restricted Subsidiaries does not provide information that otherwise would be required to be provided hereunder in reliance on such exception, 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 law, rule or regulation or result in the breach of such binding contractual obligation or the loss of such professional privilege).

Documents required to be delivered pursuant to this Section 9.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting any Borrower Materials on the Platform and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of any Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its respective securities for purposes of United States Federal and state securities laws (*provided*, *however*, that to the extent such Borrower Materials constitute Public Side Information, they shall be treated as set forth in Section 13.15); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

The Borrower represents and warrants that it, Holdings or any other direct or indirect Parent Company and any Subsidiary, in each case, if any, either (x) has no registered or publicly traded securities outstanding, or (y) files its financial statements with the SEC and/or makes its financial statements available to potential holders of its 144A securities, and, accordingly, the Borrower hereby (i) authorizes the Administrative Agent to make financial statements and other information provided pursuant to clauses (a) and (b) of this Section 9.01 above, along with the Credit Documents and the list of Disqualified Lenders, available to Public-Siders and (ii) agrees that at the time the Section 9.01 Financials are provided hereunder, they shall already have been, or shall substantially concurrently be, made available to holders of its securities. The Borrower will not request that any other material be posted to Public-Siders without expressly representing and warranting to the Administrative Agent in writing that such materials do not constitute material non-public information within the meaning of the federal securities laws or that the Borrower has no outstanding publicly traded securities, including 144A securities (it being understood that the Borrower shall have no obligation to request that any material be posted to Public-Siders). Notwithstanding anything herein to the contrary, in no event shall the Borrower request that the Administrative Agent make available to Public-Siders

budgets or any certificates, reports or calculations with respect to the Borrower's compliance with the covenants contained herein.

Section 9.02 Books, Records and Inspections; Conference Calls.

(a) The Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with U.S. GAAP shall be made of all dealings and transactions in relation to its business and activities (it being understood and agreed that any Restricted Subsidiary which is a Foreign Subsidiary may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in its jurisdiction of organization).

(b) The Borrower will permit the Administrative Agent, subject to reasonable advance notice to, and reasonable coordination with, the Borrower and during normal business hours, to visit and inspect the properties of the Borrower, at the Borrower's expense as provided in clause (c) below, inspect, audit and make extracts from the Borrower's corporate, financial or operating records, and discuss with its officers, employees, agents, advisors and independent accountants (subject to such accountants' customary policies and procedures) the Borrower's business, financial condition, assets and results of operations (it being understood that a representative of the Borrower shall be permitted to be present in any discussions with officers, employees, agent, advisors and independent accountants); *provided* that the Administrative Agent shall only be permitted to conduct one field examination and two Appraisals with respect to any Collateral comprising the Borrowing Base per 12-month period; *provided*, *further*, that (a) if at any time the Specified Excess Availability is less than the greater of (i) 15.0% of the Line Cap and (ii) $90,000,000 for a period of 5 consecutive Business Days or more during such 12-month period, one additional field examination and one additional Appraisal will be permitted in such 12-month period and (ii) if a Liquidity Period occurs during such 12-month period, a second additional field examination and a second additional Appraisal will be permitted in such 12-month period, except that during the existence and continuance of an Event of Default, there shall be no limit on the number of additional field examinations and Appraisals that shall be permitted at the Administrative Agent's request. No such inspection or visit shall unduly interfere with the business or operations of the Borrower, nor result in any damage to the property or other Collateral. No inspection shall involve invasive testing without the prior written consent of the Borrower. Neither the Administrative Agent nor any Lender shall have any duty to the Borrower to make any inspection, nor to share any results of any inspection, Appraisal or report with the Borrower. The Borrower acknowledges that all inspections, Appraisals and reports are prepared by the Administrative Agent and Lenders for their purposes, and the Borrower shall not be entitled to rely upon them.

(c) The Borrower will reimburse (or will cause to be reimbursed) the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses (other than any legal fees or costs and expenses covered under Section 13.01) of the Administrative Agent in connection with (i) one examination per fiscal year of the Borrower's books and records as described in clause (a) above and (ii) field examinations and Appraisals of Collateral comprising the Borrowing Base, in each case subject to the limitations on such examinations, audits and Appraisals permitted under the preceding clause (b). Subject to and without limiting the foregoing, the Borrower specifically agrees to pay the Administrative Agent's then standard charges for examination activities, including the standard charges of the Administrative Agent's internal appraisal group. In addition, the Administrative Agent shall be permitted to conduct additional Appraisals at its own expense. This Section 9.02 shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

(d) The Borrower will, within 30 days (or, if after using commercially reasonable efforts to schedule such call, at such later date as agreed to by the Administrative Agent at its sole discretion) after the date of the delivery (or, if later, required delivery) of the quarterly and annual financial information pursuant to Sections 9.01(a) and (b), hold a conference call or teleconference, at a time selected by the Borrower and reasonably acceptable to the Administrative Agent, with all of the Lenders that choose to participate, to review the financial results of the previous fiscal quarter or fiscal year, as the case may be, of the Borrower (it being understood that any such call may be combined with any similar call held for any of the Borrower's other lenders or security holders).

Section 9.03 Maintenance of Property; Insurance.

(a) The Borrower will, and will cause each of its Restricted Subsidiaries to, (i) except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, keep all tangible property necessary to the business of the Borrower and its Restricted Subsidiaries in reasonably good working order and condition, ordinary wear and tear, casualty, condemnation and expropriation excepted, and maintain, renew and protect all of its Intellectual Property, (ii) maintain with financially sound and

reputable insurance companies (as determined in the good faith judgment of the management of the Borrower) insurance on all such property and against all such risks as is, in the good faith determination of the Borrower, consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Borrower and its Restricted Subsidiaries, and (iii) furnish to the Collateral Agent, upon its request therefor, all information reasonably requested as to the insurance carried. The provisions of this Section 9.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) [Reserved].

(c) The Borrower will, and will cause each of the Restricted Subsidiaries to, at all times keep its tangible property constituting Collateral insured in favor of the Collateral Agent, and all liability and property policies or certificates (or certified copies thereof) with respect to such insurance (i) shall, at all times after the time required by Section 9.14, be endorsed in a customary manner to the Collateral Agent for the benefit of the Secured Creditors (including, without limitation, by naming the Collateral Agent as loss payee and/or additional insured; *provided*, that, notwithstanding anything to the contrary in this Agreement, endorsements naming the Collateral Agent as "lender loss payable" shall not be required) and (ii) if agreed by the insurer (which agreement the Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least 30 days' prior written notice thereof (or, with respect to non-payment of premiums, 10 days' prior written notice) by the respective insurer to the Collateral Agent; *provided*, that the requirements of this Section 9.03(c) shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs as to which a secured lender is not customarily granted an insurable interest therein as the Collateral Agent may approve; and (y) self-insurance programs; *provided*, *further*, unless an Event of Default shall have occurred and be continuing, (A) all proceeds from insurance policies shall be paid to the Borrower or the applicable Subsidiary Guarantor, (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower (or, upon the written request of the Borrower to the Collateral Agent, any designee of the Borrower) any amounts received by it as an additional insured or loss payee under any property insurance maintained by the Borrower and its Subsidiaries and (C) the Collateral Agent agrees that the Borrower and/or its applicable Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(d) If the Borrower or any of the Restricted Subsidiaries shall fail to maintain insurance in accordance with this Section 9.03, or the Borrower or any of the Restricted Subsidiaries shall fail to so endorse all policies with respect thereto, after any applicable grace period, the Collateral Agent shall have the right (but shall be under no obligation) to procure such insurance so long as the Collateral Agent provides written notice to the Borrower of its election to procure such insurance prior thereto, and the Credit Parties jointly and severally agree to reimburse the Collateral Agent for all reasonable costs and expenses of procuring such insurance.

Section 9.04 Existence; Franchises. The Borrower will, and will cause each of the Restricted Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence, franchises, licenses and permits in each case to the extent material; *provided*, *however*, that nothing in this Section 9.04 shall prevent (i) sales of assets and other transactions by the Borrower or any of its Restricted Subsidiaries in accordance with Section 10.02, (ii) the abandonment by the Borrower or any of its Restricted Subsidiaries of any franchises, licenses or permits that the Borrower reasonably determines are no longer material to the operations of the Borrower and its Restricted Subsidiaries taken as a whole or (iii) the withdrawal by the Borrower or any of its Restricted Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company, unlimited liability company or other applicable business entity, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.05 Compliance with Statutes, etc.

The Borrower will, and will cause each of its Subsidiaries to, comply with the FCPA and other Anti-Corruption Laws, OFAC and Canadian Economic Sanctions and Export Control Laws, the Patriot Act, applicable Sanctions and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower will, and will cause each of the Restricted Subsidiaries to, comply with all other applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower will maintain in

effect and enforce policies and procedures designed to ensure material compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 9.06 Compliance with Environmental Laws. The Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with all Environmental Laws and permits applicable to, or required by, the ownership, lease or use of Real Property now or hereafter owned, leased or operated by the Borrower or any of the Restricted Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Borrower), except such Liens as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.07 ERISA.

(a) Promptly upon a Responsible Officer of the Borrower obtaining knowledge thereof, the Borrower will deliver to the Administrative Agent a written notice setting forth in reasonable detail such occurrence and the action, if any, that the Borrower, any Restricted Subsidiary or an ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by the Borrower, such Restricted Subsidiary or the Plan administrator to or with the PBGC or any other Governmental Authority, the Multiemployer Plan sponsor or a Plan participant and any notices received by the Borrower or such Restricted Subsidiary from the PBGC or any other Governmental Authority, the Multiemployer Plan sponsor or a Plan participant with respect thereto: that (a) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (b) there has been an increase in Unfunded Pension Liabilities since the most recent date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (c) there has been an increase in the estimated withdrawal liability under Section 4201 of ERISA, if the Borrower, any Restricted Subsidiary of the Borrower and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect; or (d) the Borrower, any Restricted Subsidiary of the Borrower or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect.

(b) Canadian Pension Plans. The Credit Parties shall deliver to the Administrative Agent (A) if requested by the Administrative Agent, copies of each annual and other return, report or valuation with respect to each Canadian Pension Plan as filed with any applicable Governmental Authority; (B) promptly after receipt thereof, a copy of any material direction, order, notice, ruling or opinion that any Credit Party may receive from any applicable Governmental Authority with respect to any Canadian Pension Plan; and (C) prior notification of the establishment of any new Canadian Defined Benefit Pension Plan to which a Canadian Credit Party has assumed an obligation to contribute or has any liability under, or the assumption of any liability under or commencement of contributions to any Canadian Defined Benefit Pension Plan by a Canadian Credit Party in respect of which such Canadian Credit Party was not previously contributing or liable.

Section 9.08 End of Fiscal Years; Fiscal Quarters. The Borrower will cause (i) each of its, and each of the Restricted Subsidiaries' fiscal years to end on or near December 31 of each year; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year (or the fiscal year of its Restricted Subsidiaries) 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 amendments to this Agreement that are necessary, in the judgment of the Administrative Agent and the Borrower or Holdings, as applicable, to reflect such change in fiscal year and (ii) each of its, and each of its Restricted Subsidiaries' fiscal quarters to end on or near March 31, June 30, September 30 and December 31 of each year.

Section 9.09 [Reserved].

Section 9.10 Payment of Taxes. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, the Borrower will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it (including in its capacity as a withholding agent), prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Borrower or any of its Subsidiaries not otherwise permitted under Section 10.01(i); *provided* that neither the Borrower

nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with U.S. GAAP (or, for any Restricted Subsidiaries that are Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization.

Section 9.11 Use of Proceeds. The Borrower will use the proceeds of the Loans only as provided in Section 8.08.

Section 9.12 Additional Security; Further Assurances; etc.

(a) The Borrower will, and will cause each of the Subsidiary Guarantors to, grant to the Collateral Agent for the benefit of the Secured Creditors security interests in such assets of the Borrower and the Subsidiary Guarantors as are acquired after the Closing Date (other than assets constituting Excluded Collateral) and as may be reasonably requested from time to time by the Administrative Agent (collectively, as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time, the "Additional Security Documents"). All such security interests shall be granted pursuant to documentation consistent with the Security Documents or otherwise reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to take pursuant to clause (e) below) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable Debtor Relief Laws and by equitable principles (regardless of whether enforcement is sought in equity or at law)), subject to the Intercreditor Agreement and any Additional Intercreditor Agreement, superior to and prior to the rights of all third Persons other than holders of Permitted Liens with priority by virtue of applicable law and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly intimated and recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents. Notwithstanding any other provision in this Agreement or any other Credit Document, no Excluded Subsidiary shall be required to pledge any of its assets to secure any obligations of the Borrower under the Credit Documents or guarantee the obligations of the Borrower under the Credit Documents.

(b) Subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreement, with respect to any Person that is or becomes a Restricted Subsidiary after the Closing Date, deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to the Security Documents). Subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreement, if any additional direct or indirect U.S. Subsidiary of the Borrower (i) is formed, acquired or ceases to constitute an Excluded Subsidiary following the Closing Date and such U.S. Subsidiary is (1) a Wholly-Owned Domestic Subsidiary that is not an Excluded Subsidiary or (2) any other U.S. Subsidiary that may be designated by a Parent Company in its sole discretion, the Borrower shall cause such U.S. Subsidiary to become a "Subsidiary Borrower" or "Subsidiary Guarantor" hereunder by causing such Subsidiary (A) to execute a joinder agreement to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and such Security Documents creating such Lien over its assets in favor of the Collateral Agent for the benefit of the Secured Creditors on such terms and of such scope substantially consistent with the Security Documents; (B) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the U.S. Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent; and (C) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 9.12(b) and customarily opined upon by counsel to the Credit Parties as the Administrative Agent may reasonably request. At the option of the Borrower, it may cause a Restricted Subsidiary that is a U.S. Subsidiary and a Subsidiary Guarantor to become a "Subsidiary Borrower" hereunder by causing such U.S. Subsidiary (A) to execute a joinder agreement to this Agreement and/or the Guaranty Agreement, as applicable, in form and substance satisfactory to the Administrative Agent, and such Security Documents creating such Lien over its assets in favor of the Collateral Agent for the benefit of the Secured Creditors on such terms and of such scope substantially consistent with U.S. Security Agreement or in any event, in form and substance reasonably satisfactory to the Collateral Agent; (B) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by U.S. Security Agreement to be duly perfected to the extent

required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent; (C) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 9.12(b) and customarily opined upon by counsel to the Credit Parties as the Administrative Agent may reasonably request; and (D) to furnish to the Administrative Agent and the Lenders all documentation and other information that they reasonably determine is required by United States regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. At the option of the Borrower, it may cause a Restricted Subsidiary that is a Canadian Subsidiary to become a "Subsidiary Guarantor" hereunder by causing such Subsidiary to (x) execute a joinder agreement to the Guaranty Agreement and such Security Documents creating such Lien over its assets in favor of the Collateral Agent for the benefit of the Secured Creditors on such terms and of such scope substantially consistent with the Security Agreement or in any event, in form and substance reasonably satisfactory to the Collateral Agent and (y) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the Canadian Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent.

(c) The Borrower will, and will cause each of the Subsidiary Guarantors to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at the Borrower's expense, any document or instrument supplemental to or confirmatory of the Security Documents to the extent deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority (subject to the terms of the Intercreditor Agreement) of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by U.S. Security Agreement or the Canadian Security Agreement, as applicable.

(d) [Reserved].

(e) The Borrower agrees that each action required by clauses (a) through (c) of this Section 9.12 shall be completed in no event later than 90 days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or in each case, such longer period as the Administrative Agent shall otherwise agree), as the case may be; *provided* that, in no event will the Borrower or any of its Restricted Subsidiaries be required to take any action to obtain consents from third parties with respect to its compliance with this Section 9.12.

Section 9.13 Post-Closing Actions. The Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 9.13 as soon as commercially reasonable and by no later than the date set forth in Schedule 9.13 with respect to such action or such later date as the Administrative Agent may reasonably agree in its sole discretion.

Section 9.14 Permitted Acquisitions.

(a) Subject to the provisions of this Section 9.14 and the requirements contained in the definition of "Permitted Acquisition," the Borrower and its Restricted Subsidiaries may from time to time after the Closing Date effect Permitted Acquisitions, so long as (in each case except to the extent the Required Lenders otherwise specifically agree in writing in the case of a specific Permitted Acquisition) the Payment Conditions shall be satisfied on a Pro Forma Basis for such Permitted Acquisition.

(b) [Reserved].

(c) The Borrower shall cause each Restricted Subsidiary (other than an Excluded Subsidiary) which is formed to effect, or is acquired pursuant to, a Permitted Acquisition (and each Credit Party that is the direct parent of such Restricted Subsidiary that was so formed or acquired) to comply with, and to execute and deliver all of the documentation as and solely to the extent (and within the relevant time periods) required by, Section 9.12, to the reasonable satisfaction of the Administrative Agent (it being understood that nothing in this clause (c) shall require the Borrower and its Restricted Subsidiaries to take any action pursuant to Section 9.12 that is otherwise at their option).

Section 9.15 [Reserved].

Section 9.16 Designation of Subsidiaries. The Borrower may at any time and from time to time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by written notice to the Administrative Agent; *provided* that (i) immediately before and after such designation, no Event of Default shall have occurred and be continuing, (ii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, such designation shall constitute an Investment in such Unrestricted Subsidiary (calculated as an amount equal to the sum of (x) the fair market value of the Equity Interests of the designated Subsidiary and any of its Subsidiaries that are owned by the Borrower or any Restricted Subsidiary immediately prior to such designation (such fair market value to be calculated without regard to any Obligations of such designated Subsidiary or any of its Subsidiaries under the Guaranty Agreement) and (y) the aggregate principal amount of any Indebtedness owed by such Subsidiary and any of its Subsidiaries to the Borrower or any of its Restricted Subsidiaries immediately prior to such designation, all calculated, except as set forth in the parenthetical to clause (x) above, on a consolidated basis in accordance with U.S. GAAP), and such Investment shall be permitted under Section 10.05, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it or any of its Subsidiaries is a "Restricted Subsidiary" for the purpose of (I) the Secured Notes Indenture or (II) any Permitted Junior Notes Document or other debt instrument, in each case of this clause (II), with a principal amount in excess of the Threshold Amount, (iv) following the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower shall comply with the provisions of Section 9.12 with respect to such designated Restricted Subsidiary, (v) no Restricted Subsidiary may be a Subsidiary of an Unrestricted Subsidiary (and any Subsidiary of an Unrestricted Subsidiary that is acquired or formed after the date of designation shall automatically be designated as an Unrestricted Subsidiary), (vi) no Borrower may be designated an Unrestricted Subsidiary (*provided* if the Borrower is redesignated as a non-Borrower Restricted Subsidiary, such Restricted Subsidiary may be designated an Unrestricted Subsidiary; *provided*, *further*, that the Borrower may not be designated an Unrestricted Subsidiary), (vii) no Unrestricted Subsidiary may hold Intellectual Property that is material to the operations of the Borrower and its Subsidiaries taken as a whole, (viii) [reserved] and (ix) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, each of (x) the Subsidiary to be so designated and (y) 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), and (ix) if any Subsidiary Borrower is to be designated as an Unrestricted Subsidiary, a new Borrowing Base Certificate giving *pro forma* effect to such designation shall have been delivered in connection with such designation if the assets of such Subsidiary Borrower comprise more than 10% of the Borrowing Base. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary and its Subsidiaries existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's Investment in such Subsidiary.

Section 9.17 Collateral Monitoring and Reporting.

(a) Borrowing Base Certificates. (i) By the 20th day of each month (or if such date is not a Business Day, the following Business Day), the Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders) a Borrowing Base Certificate prepared as of the close of business on the last Business Day of the previous month (*provided* that, during a Liquidity Period, the Borrower shall deliver to the Administrative Agent weekly Borrowing Base Certificates by Wednesday (or if such date is not a Business Day, the following Business Day) of every week prepared as of the close of business on Friday of the previous week, which weekly Borrowing Base Certificates shall be computed according to a method reasonably specified by the Administrative Agent after consultation with the Borrower), or more frequently if elected by the Borrower (*provided* that if the Borrower exercises such election, the Borrowing Base shall continue to be reported on such more frequent basis for at least 3 months after the date of such election); and (ii) upon any sale or other disposition of Collateral having an aggregate book value in excess of 10% of the then existing Borrowing Base, an updated Borrowing Base Certificate, prepared after giving effect to such sale or other disposition. All calculations of the Borrowing Base in any Borrowing Base Certificate shall be made by the Borrower and certified by a Responsible Officer, *provided* that the Administrative Agent may from time to time review and adjust any such calculation in consultation with the Borrower to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Reserves.

(b) Collateral Reporting. The Borrower will furnish to the Administrative Agent each of the reports set forth on Schedule 9.17(b) at the times specified therein.

(c) Maintenance of U.S. Dominion Account. With respect to each Credit Party's Deposit Accounts (other than Excluded Accounts) located in the United States and each U.S. Dominion Account, within 120 days (or such later date as Administrative Agent may agree in its reasonable discretion) of the Closing Date or, if opened following the Closing Date, within sixty (60) days (or such

later date as the Administrative Agent may agree in its reasonable discretion), of the opening of such Deposit Account or the date any Person that owns such Deposit Account becomes a Credit Party hereunder, (i) each Credit Party shall obtain from each bank or other depository institution that maintains such Deposit Account, a Deposit Account Control Agreement, in form reasonably satisfactory to the Administrative Agent that provides for such bank or other depository institution, following its receipt of a Liquidity Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Borrower), to transfer to a U.S. Dominion Account, on a daily basis, all balances in such Deposit Account for application to the Obligations then outstanding (the "U.S. Sweep"); *provided*, that, following the termination of the Liquidity Period, the Administrative Agent shall promptly instruct such bank or other depository institution to terminate the U.S. Sweep; (ii) the Borrower shall establish the U.S. Dominion Account and obtain a Deposit Account Control Agreement in form reasonably satisfactory to the Administrative Agent, from the U.S. Dominion Account bank, establishing the Administrative Agent's control over such U.S. Dominion Account; (iii) each Credit Party irrevocably appoints the Administrative Agent as such Credit Party's attorney-in-fact to collect such balances during a Liquidity Period to the extent any such delivery is not so made; and (iv) each Credit Party shall instruct each Account Debtor to make all payments (or, if applicable, direct such payments to be made) with respect to Collateral into Deposit Accounts subject to Deposit Account Control Agreements, or the Credit Parties shall promptly (and in any event within seven (7) days) direct any such payments into Deposit Accounts subject to Deposit Account Control Agreements (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Account pursuant to clause (v) of the definition thereof); and it is expressly acknowledged that the Administrative Agent reserves the right to impose Reserves with respect to the failure to obtain any such Deposit Account Control Agreement within such 120 or sixty (60) day period, at or after the end of such period, as applicable. The provisions of this Section 9.17(c) do not apply to Excluded Accounts.

(d) Maintenance of Canadian Dominion Account. With respect to each Credit Party's Deposit Accounts (other than Excluded Accounts) located in Canada and each Canadian Dominion Account, within 120 days (or such later date as Administrative Agent may agree in its reasonable discretion) of the Closing Date or, if opened following the Closing Date, within sixty (60) days (or such later date as the Administrative Agent may agree in its reasonable discretion), of the opening of such Deposit Account or the date any Person that owns such Deposit Account becomes a Credit Party hereunder, (i) each Credit Party shall obtain from each bank or other depository institution that maintains such Deposit Account, a Deposit Account Control Agreement, in form reasonably satisfactory to the Administrative Agent that provides for such bank or other depository institution, following its receipt of a Liquidity Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Borrower), to transfer to a Canadian Dominion Account, on a daily basis, all balances in such Deposit Account for application to the Obligations then outstanding (the "Canadian Sweep"); *provided*, that, following the termination of the Liquidity Period, the Administrative Agent shall promptly instruct such bank or other depository institution to terminate the Canadian Sweep; (ii) the Borrower or relevant Canadian Credit Party shall establish the Canadian Dominion Account and obtain a Deposit Account Control Agreement in form reasonably satisfactory to the Administrative Agent, from the Canadian Dominion Account bank, establishing the Administrative Agent's control over the Canadian Dominion Account; (iii) each Credit Party irrevocably appoints the Administrative Agent as such Credit Party's attorney-in-fact to collect such balances during a Liquidity Period to the extent any such delivery is not so made; and (iv) each Credit Party shall instruct each Account Debtor to make all payments (or, if applicable, direct such payments to be made) with respect to Collateral into Deposit Accounts subject to Deposit Account Control Agreements, or the Credit Parties shall promptly (and in any event within seven (7) days) direct any such payments into Deposit Accounts subject to Deposit Account Control Agreements (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Account pursuant to clause (v) of the definition thereof); and it is expressly acknowledged that the Administrative Agent reserves the right to impose Reserves with respect to the failure to obtain any such Deposit Account Control Agreement within such 120 or sixty (60) day period, at or after the end of such period, as applicable. The provisions of this Section 9.17(d) do not apply to Excluded Accounts.

(e) Deposit Account Operations.

(i) Schedule 9 to the Perfection Certificate sets forth all Deposit Accounts (other than Excluded Accounts) maintained by the Credit Parties, including the Dominion Accounts, as of the Closing Date. The Borrower shall promptly notify the Administrative Agent of any opening or closing of a Deposit Account (other than any Excluded Accounts), and shall not open any Deposit Accounts (other than any Excluded Accounts) at a bank not reasonably acceptable to the Administrative Agent (it being acknowledged that all banks set forth on Schedule 9 to the Perfection Certificate are acceptable to the Administrative Agent).

(ii) If any Credit Party receives cash or any check, draft or other item of payment payable to such Credit Party with respect to any Collateral, it shall hold the same in trust for the Administrative Agent and promptly (and in any event within seven (7) days) deposit the same into any Deposit Account that is subject to a Deposit Account Control Agreement or a Dominion Account.

(iii) The Credit Parties shall maintain all proceeds of Collateral in segregated accounts and such proceeds of Collateral shall not be commingled with the proceeds of any collateral relating to Floor Plan Financing at any time; *provided*, for the avoidance of doubt, that the Borrower shall have 120 days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion) to segregate such accounts.

(iv) The Collateral Agent shall be given sufficient access to each relevant Deposit Account to ensure that the provisions of Section 11.11 are capable of being complied with including, without limitation, by having entered into a Deposit Account Control Agreement or other equivalent agreement with the account bank holding the relevant Deposit Account requiring such account bank to follow the instructions of the Administrative Agent and/or the Collateral Agent if instructions are given by it.

(f) Closing Date Borrowing Base Termination Date. If the Borrower has not delivered to the Administrative Agent the Initial Field Exam and Appraisal on or prior to the Closing Date (it being acknowledged and agreed that the delivery of the Initial Field Exam and Appraisal shall not be a condition precedent to the availability of any Credit Extension), the Borrower shall deliver the Initial Field Exam and Appraisal and a Borrowing Base Certificate to the Administrative Agent no later than the 120th day following the Closing Date or such later date as the Administrative Agent shall agree in its Permitted Discretion (the earlier of such 120th day following the Closing Date (or such later date as the Administrative Agent shall agree) and the date of the actual delivery of the Initial Field Exam and Appraisal herein referred to as the "Closing Date Borrowing Base Termination Date").

ARTICLE 10 Negative Covenants. The Borrower on behalf of itself and each of its Restricted Subsidiaries (and Holdings in the case of Section 10.10(b)), as applicable, hereby covenant and agree that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations not then due and payable pursuant to Section 11.11) or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent):

Section 10.01 Liens. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Borrower or any of its Restricted Subsidiaries, whether now owned or hereafter acquired; *provided* that the provisions of this Section 10.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as "Permitted Liens"):

(i) Liens for Taxes, assessments or governmental charges or levies not yet overdue for 30 days or not yet due and payable, or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with U.S. GAAP (or, for any Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(ii) Liens in respect of property or assets of the Borrower or any of its Restricted Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, contractors', materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, subject to any such Lien for which adequate reserves have been established in accordance with U.S. GAAP (or, for any Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(iii) Liens (x) in existence on the Closing Date which are listed, and the property subject thereto described, in Schedule 10.01(iii) (or to the extent not listed on such Schedule 10.01(iii), where the principal amount of obligations secured by such Liens is less than $10,000,000 in the aggregate) and (y) Liens securing Permitted Refinancing Indebtedness in respect of any Indebtedness secured by the Liens referred to in clause (x);

(iv) (x) Liens created pursuant to the Credit Documents (including Liens on Secured Bank Product Obligations) and (y) Liens securing obligations under the Secured Notes Indenture and the Secured Notes Documents related thereto incurred pursuant to Section 10.04(i)(y), including any Permitted Refinancing Indebtedness in respect thereof; *provided* that in the case of Liens securing such Indebtedness under the Secured Notes Indenture, the Secured Notes Agent (or other applicable representative thereof on behalf of the holders of such Indebtedness) shall have entered into with the Administrative Agent and/or the Collateral Agent the Intercreditor Agreement;

(v) leases, subleases, licenses or sublicenses (including non-exclusive licenses or sublicenses of software, technology and other Intellectual Property) granted to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(vi) Liens (x) upon assets of the Borrower or any of its Restricted Subsidiaries securing Indebtedness permitted by Section 10.04(iii); *provided* that such Liens do not encumber any asset of the Borrower or any of its Restricted Subsidiaries other than the assets acquired with such Indebtedness and after-acquired property that is affixed or incorporated into such assets and proceeds and products thereof; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms and (y) Liens securing Permitted Refinancing Indebtedness in respect of any Indebtedness secured by the Liens referred to in clause (x);

(vii) Liens securing Permitted Refinancing Indebtedness to the extent such Liens are permitted pursuant to the definition thereof;

(viii) easements, rights-of-way, restrictions (including zoning and other land use restrictions), covenants, conditions, licenses, encroachments, protrusions and other similar charges or encumbrances and title deficiencies, which in the aggregate do not materially interfere with the conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(ix) Liens arising from precautionary UCC, PPSA or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(x) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 11.09 and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(xi) statutory, common law and contractual landlords' liens under leases to which the Borrower or any of its Restricted Subsidiaries is a party;

(xii) Liens (other than Liens imposed under ERISA) incurred in the ordinary course of business in connection with workers' compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xiii) Permitted Encumbrances;

(xiv) (A) Liens on property or assets (other than property or assets constituting Collateral owned by a Credit Party or by a Restricted Subsidiary that is organized in the same jurisdiction as a Credit Party, unless such Liens are expressly made junior to the Liens in favor of the Administrative Agent) acquired pursuant to a Permitted Acquisition, or on property or assets of a Restricted Subsidiary of the Borrower in existence at the time such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition; *provided* that (x) any Indebtedness that is secured by such Liens is permitted to exist under Section 10.04, and (y) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any other asset of the Borrower or any of its Restricted Subsidiaries and (B) Liens securing Permitted Refinancing Indebtedness in respect of Indebtedness in respect of any Indebtedness secured by the Liens referred to in clause (A);

(xv) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business;

(xvi) Liens on assets of non-Credit Parties (other than, solely for the purposes of Section 10.04(viii)(b), non-Credit Parties organized in the jurisdiction of a Credit Party) securing Indebtedness of non-Credit Parties permitted pursuant to Section 10.04(viii);

(xvii) any interest or title of, and any Liens created by, a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, license or sublicense agreement (including non-exclusive software and other technology licenses) in the ordinary course of business;

(xviii) Liens on property subject to Sale-Leaseback Transactions to the extent such Sale-Leaseback Transactions are permitted by Section 10.02(xii);

(xix) any encumbrances or restrictions (including, without limitation, put and call agreements) with respect to the Equity Interests of any joint venture or similar arrangement permitted by the terms of this Agreement arising pursuant to the agreement evidencing such joint venture or similar arrangement;

(xx) Liens in favor of the Borrower or any Restricted Subsidiary securing intercompany Indebtedness permitted by Section 10.05; *provided* that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 10.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(xxi) Liens on specific items of inventory or other goods and proceeds thereof (including documents, instruments, accounts, chattel paper, letter of credit rights, general intangibles, supporting obligations, and claims under insurance policies relating thereto) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xxii) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 10.04(x);

(xxiii) Liens that may arise on inventory or equipment of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than the Borrower and its Restricted Subsidiaries (including Liens arising out of conditional sale, title retention (including extended retention of title), consignment or similar arrangements for the sale of goods);

(xxiv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xxv) Liens (i) of a collection bank arising under Section 4-210 of the UCC (or similar provisions of other applicable laws) on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxvi) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.05(ii); *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(xxvii) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xxviii) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted hereunder;

(xxix) other Liens attaching to properties and assets (other than property or assets constituting Collateral owned by a Credit Party or by a Restricted Subsidiary that is organized in the same jurisdiction as a Credit Party, unless such Liens are expressly made junior to the Liens in favor of the Administrative Agent) to the extent securing liabilities with a principal amount not in excess of the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of incurrence) in the aggregate at any time outstanding;

(xxx) Liens on Collateral securing obligations in respect of Indebtedness permitted by Sections 10.04(xxvii) and 10.04(xxix);

(xxxi) cash deposits with respect to any Permitted Junior Debt or any other Indebtedness, in each case to the extent permitted by Section 10.07;

(xxxii) Liens on accounts receivable sold in connection with the sale or discount of accounts receivable permitted by Section 10.02(iv);

(xxxiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xxxiv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xxxv) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Borrower and the Restricted Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

(xxxvi) deposits made in the ordinary course of business to secure liability to insurance carriers or under self-insurance arrangements in respect of such obligations;

(xxxvii) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxxviii) so long as no Default has occurred and is continuing at the time of granting such Liens, Liens on cash deposits securing any Swap Contracts permitted hereunder that do not constitute Obligations hereunder;

(xxxix) Liens arising in connection with any Qualified Securitization Transaction or Receivables Facility with respect to which the Securitization Assets or Receivables Assets, as applicable, subject thereto consist solely of assets originated by one or more Foreign Subsidiaries (other than a Foreign Subsidiary organized in the jurisdiction of a Credit Party);

(xl) customary Liens granted in favor of a trustee to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to which Indebtedness not prohibited by the indenture is issued (including the indenture under which the notes are to be issued);

(xli) leases and subleases of real property that do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(xlii) Liens on cash or Cash Equivalents (and the related escrow accounts) in connection with the issuance into (and pending the release from) escrow of any Permitted Junior Debt;

(xliii) Liens on property or assets used to redeem, repay, defease or to satisfy and discharge Indebtedness; *provided* that such redemption, repayment, defeasance or satisfaction and discharge is not prohibited by this Agreement and that such deposit shall be deemed for purposes of Section 10.07 (to the extent applicable) to be a prepayment of such Indebtedness;

(xliv) Liens to secure assets pledged under Floor Plan Financings (which Liens, for the avoidance of doubt, shall be limited to Liens on assets subject to the Floor Plan Financings and shall not extend to any Collateral); and

(xlv) the reservations in any original grants from the Crown of any land or interest therein and statutory exceptions to title that does not materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary.

In connection with the granting of Liens of the type described in this Section 10.01 by the Borrower or any of its Restricted Subsidiaries, the Administrative Agent and the Collateral Agent shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

Section 10.02 Consolidation, Merger, or Sale of Assets, etc.

The Borrower will not, and will not permit any of the Restricted Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger, amalgamation or consolidation, or convey, sell, lease or otherwise dispose of all or any part of its property or assets, or enter into any Sale-Leaseback Transaction, except that:

(i) any Investment permitted by Section 10.05 may be structured as a merger, consolidation or amalgamation;

(ii) the Borrower and its Restricted Subsidiaries may sell assets (including Equity Interests) so long as (x) the Borrower or the respective Restricted Subsidiary receives at least fair market value (as determined in good faith by the Borrower or such Restricted Subsidiary, as the case may be) and (y) in the case of any single transaction that involves assets having a fair market value of more than the greater of $30,000,000 and 10.0% of Consolidated EBITDA (measured at the time of such sale), at least 75% of the consideration received by the Borrower or such Restricted Subsidiary shall be in the form of cash, Cash Equivalents or, subject to the proviso below, Designated Non-cash Consideration (taking into account the amount of cash and Cash Equivalents, the principal amount of any promissory notes and the fair market value, as determined by the Borrower or such Restricted Subsidiary, as the case may be, in good faith, of any other consideration (including Designated Non-cash Consideration)) and is paid at the time of the closing of such sale; *provided*, *however*, that for purposes of this clause (y), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable disposition and for which the Borrower and the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes, other obligations or assets received by the Borrower or such Restricted Subsidiary from such transferee that are convertible by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in the conversion) within 180 days following the closing of the applicable asset sale, (C) consideration consisting of Indebtedness of the Borrower or such Restricted Subsidiary that is not Subordinated Indebtedness received from such transferee, (D) accounts receivable of a business retained by the Borrower or any of its Restricted Subsidiaries, as the case may be, following the sale of such business; *provided* that such accounts receivable (1) are not past due more than 90 days and (2) do not have a payment date greater than 120 days from the date of the invoices creating such accounts receivable and (E) any Designated Non-cash Consideration received by the Borrower or any of its Restricted Subsidiaries in such asset sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (y) that is at that time outstanding, not to exceed the greater of $120,000,000 and 35.0% of Consolidated EBITDA (measured at the time of the receipt of such Designated Non-cash Consideration) (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

(iii) each of the Borrower and its Restricted Subsidiaries may lease (as lessee) or license (as licensee) real or personal property (so long as any such lease or license does not create a Capitalized Lease Obligation except to the extent permitted by Section 10.04(iii));

(iv) each of the Borrower and its Restricted Subsidiaries may sell or discount, in each case in the ordinary course of business, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(v) each of the Borrower and its Restricted Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Restricted Subsidiaries, including of Intellectual Property;

(vi) (A) any U.S. Subsidiary of the Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into the Borrower (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and, if such surviving Person is not the Borrower, such Person expressly assumes, in writing, all the obligations of the Borrower under the Credit Documents pursuant to an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent) or any Subsidiary Borrower (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a Wholly-Owned Domestic Subsidiary of the Borrower, is a corporation, limited liability company or limited partnership and is or becomes a Subsidiary Borrower concurrently with such merger, consolidation, dissolution, amalgamation or liquidation), (B) any Restricted Subsidiary that is not a Credit Party may be merged, consolidated, dissolved, amalgamated or liquidated with or into any other Restricted Subsidiary that is not a Credit Party (C) any Restricted Subsidiary may be merged, consolidated, dissolved, amalgamated or liquidated with or into any Credit Party (so long as such Credit Party is the surviving or continuing Person of such merger, consolidation, dissolution, amalgamation or liquidation); *provided* that any such merger, consolidation, dissolution, amalgamation or liquidation shall only be permitted pursuant to this clause (vi), so long as (I) no Event of Default then exists or would exist immediately after giving effect thereto and (II) any security interests granted to the Collateral Agent for the benefit of the Secured Creditors in the assets (and Equity Interests) of any such Person subject to any such transaction shall not be impaired in any material respect as a result of such merger, consolidation, dissolution, amalgamation or liquidation;

(vii) any disposition of (i) Securitization Assets arising in connection with a Qualified Securitization Transaction or (ii) the Receivables Assets arising in connection with a Receivables Facility, in each case, permitted by Section 10.01(xxxix) and which Securitization Assets or Receivables Assets, as applicable, consist solely of assets originated by one or more Foreign Subsidiaries (other than a Foreign Subsidiary organized in the jurisdiction of a Credit Party);

(viii) each of the Borrower and its Restricted Subsidiaries may make sales or leases of (A) inventory and equipment in the ordinary course of business, (B) goods held for sale in the ordinary course of business and (C) immaterial assets with a fair market value, in the case of this clause (C), of less than the greater of $30,000,000 and 10.0% of Consolidated EBITDA (measured at the time of such sale or lease, as applicable);

(ix) each of the Borrower and its Restricted Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property, in each case, in the ordinary course of business and (ii) property no longer used or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries;

(x) each of the Borrower and its Restricted Subsidiaries may sell or otherwise dispose of assets acquired pursuant to a Permitted Acquisition so long as (x) such assets are not used or useful to the core or principal business of the Borrower and its Restricted Subsidiaries, (y) such assets have a fair market value not in excess of the greater of $40,000,000 and 12.0% of

Consolidated EBITDA (measured at the time of such sale or other disposition), and (z) such assets are sold or otherwise disposed of on or prior to the first anniversary of the relevant Permitted Acquisition;

(xi) in order to effect a sale, transfer or disposition otherwise permitted by this Section 10.02, a Restricted Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into another Person, or may be dissolved or liquidated;

(xii) each of the Borrower and its Restricted Subsidiaries may effect Sale-Leaseback Transactions (a) involving real property acquired after the Closing Date and not more than 180 days prior to such Sale-Leaseback Transaction for cash and fair market value (as determined by the Borrower) or (b) with respect to any other Sale-Leaseback Transactions not described in subclause (xii)(a), having an aggregate fair market value not in excess of the greater of $20,000,000 and 6.0% of Consolidated EBITDA (measured at the time of such Sale-Leaseback Transaction);

(xiii) any transfer of title or other disposition of assets subject or pursuant to any Floor Plan Financing (or, for the avoidance of doubt, any documents governing Floor Plan Financing);

(xiv) each of the Borrower and its Restricted Subsidiaries may issue or sell Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(xv) each of the Borrower and its Restricted Subsidiaries may make transfers of property subject to casualty, condemnation or expropriation proceedings upon the occurrence of the related Recovery Event;

(xvi) each of the Borrower and its Restricted Subsidiaries may abandon, allow to lapse or expire or otherwise become invalid Intellectual Property rights in the ordinary course of business, in the exercise of its reasonable good faith judgment;

(xvii) each of the Borrower and its Restricted Subsidiaries may make voluntary terminations of or unwind Swap Contracts;

(xviii) each of the Borrower and its Restricted Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Borrower or any of its Restricted Subsidiaries and acquisitions by the Borrower or any of its Restricted Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(xix) each of the Borrower and its Restricted Subsidiaries may terminate leases and subleases;

(xx) each of the Borrower and its Restricted Subsidiaries may use cash and Cash Equivalents (or other assets that were Cash Equivalents when the relevant Investment was made) to make payments that are not otherwise prohibited by this Agreement;

(xxi) each of the Borrower or its Restricted Subsidiaries may sell or otherwise dispose of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(xxii) sales, dispositions or contributions of property (A) between Credit Parties (other than Holdings), (B) between Restricted Subsidiaries (other than Credit Parties), (C) by Restricted Subsidiaries that are not Credit Parties to the Credit Parties (other than Holdings) or (D) by Credit Parties to any Restricted Subsidiary that is not a Credit Party; *provided* with respect to clause (D) that (x) (1) the portion (if any) of any such sale, disposition or contribution of property made for less than fair market value and (2) any noncash consideration received in exchange for any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Restricted Subsidiary subject to Section 10.05 and (y) a new Borrowing Base Certificate shall be delivered if assets comprising more than 10% of the Borrowing Base are transferred in a single transaction or series of related transactions to non-Credit Parties;

(xxiii) dispositions of Investments (including Equity Interests) 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;

(xxiv) transfers of condemned or expropriated property as a result of the exercise of "eminent domain" or other similar powers to the respective Governmental Authority or agency that has condemned or expropriated the same (whether by deed in lieu of condemnation or otherwise), and transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(xxv) any disposition of any asset between or among the Restricted Subsidiaries as a substantially concurrent interim disposition in connection with a disposition otherwise permitted pursuant to this Section 10.02;

(xxvi) dispositions permitted by Section 10.03; and

(xxvii) dispositions or other transactions undertaken in good faith for Tax planning purposes, so long as after giving effect to such dispositions or other transactions, the security interest of the Collateral Agent in the Collateral for the benefit of the Secured Creditors is not materially impaired.

To the extent the Required Lenders (or such other percentage of the Lenders as may be required by Section 10.02) waive the provisions of this Section 10.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 10.02 (other than to the Borrower or a Guarantor), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate by them in order to effect the foregoing.

Notwithstanding anything to the contrary in this Section 10.02, the Borrower and its Restricted Subsidiaries shall not, directly or indirectly, sell or otherwise transfer any material Intellectual Property that is material to the operations of the Borrower and its Subsidiaries taken as a whole to any Unrestricted Subsidiary.

Section 10.03 Dividends. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, authorize, declare or pay any Dividends with respect to the Borrower or any of its Restricted Subsidiaries, except that:

(i) any Restricted Subsidiary of the Borrower may authorize, declare and pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Borrower or to other Restricted Subsidiaries of the Borrower which directly or indirectly own equity therein;

(ii) any non-Wholly-Owned Subsidiary of the Borrower may authorize, declare and pay cash Dividends to its shareholders generally so long as the Borrower or its Restricted Subsidiary which owns the Equity Interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(iii) so long as no Event of Default exists at the time of the applicable Dividend, redemption or repurchase or would exist immediately after giving effect thereto, the Borrower may authorize, declare and pay cash Dividends to Holdings to allow Holdings to pay cash dividends or make cash distributions to any other Parent Company to redeem or repurchase, contemporaneously with such Dividend, Equity Interests of Holdings or such other Parent Company from management, employees, officers and directors (and their successors and assigns) of the Borrower and its Restricted Subsidiaries; *provided* that (A) the aggregate amount of Dividends made by the Borrower to Holdings pursuant to this clause (iii), and the aggregate amount paid by Holdings or such other Parent Company in respect of all such Equity Interests so redeemed or repurchased shall not (net of any cash proceeds received by Holdings from issuances of its Equity Interests and contributed to the Borrower in connection with such redemption or repurchase) exceed during any fiscal year of the Borrower the greater of $40,000,000 and 12.0% of Consolidated EBITDA (measured at the time of such Dividend) (*provided* that the amount of cash Dividends permitted to be, but not, paid in any fiscal year pursuant to this clause (iii) shall increase the amount of cash Dividends permitted to be paid in the succeeding two fiscal years pursuant to this clause (iii)); (B) such amount in any calendar year may be increased by an

amount not to exceed: (I) the cash proceeds of key man life insurance policies received by the Borrower or any of its Restricted Subsidiaries after the Closing Date; *plus* (II) the net proceeds from the sale of Equity Interests of Holdings, in each case to members of management, managers, directors or consultants of any Parent Company or any of its Subsidiaries that occurs after the Closing Date, where the net proceeds of such sale are received by or contributed to the Borrower; *less* (III) the amount of any Dividends previously made with the cash proceeds described in the preceding clause (I); and (C) cancellation of Indebtedness owing to the Borrower from members of management, officers, directors, employees of the Borrower or any of its Subsidiaries in connection with a repurchase of Equity Interests of Holdings or any other Parent Company will not be deemed to constitute a Dividend for purposes of this Agreement;

(iv) the Borrower may authorize, declare and pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) to pay expenses incurred by Holdings or any other Parent Company in connection with offerings, registrations, or exchange listings of equity or debt securities and maintenance of same (A) where the net proceeds of such offering are to be received by or contributed to the Borrower, (B) in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed or loaned, or (C) otherwise on an interim basis prior to completion of such offering so long as Holdings and any other Parent Company shall cause the amount of such expenses to be repaid to the Borrower or the relevant Restricted Subsidiary of the Borrower out of the proceeds of such offering promptly if such offering is completed;

(v) the Borrower may authorize, declare and pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) to pay costs (including all professional fees and expenses) incurred by Holdings or any other Parent Company in connection with reporting obligations under or otherwise incurred in connection with compliance with applicable laws, applicable rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, including in respect of any reports filed with respect to the Securities Act, the Securities Exchange Act or the respective rules and regulations promulgated thereunder;

(vi) the Borrower may authorize, declare and pay cash Dividends or other distributions, or make loans or advances to, any Parent Company or the equity interest holders thereof in amounts required for any Parent Company or the equity interest holders thereof to pay, in each case without duplication:

(A) franchise and similar Taxes (and other fees and expenses) required to maintain their existence to the extent such Taxes, fees and expenses are reasonably attributable to the operations of Holdings, the Borrower and its Restricted Subsidiaries;

(B) with respect to any taxable period where the Borrower or any of its Subsidiaries are members of a consolidated, combined or similar income tax group for U.S. federal and/or applicable state, local or foreign income or similar tax purposes of which a direct or indirect parent of the Borrower is the common parent or other applicable taxpayer, the portion of any U.S. federal, state, local and/or foreign income and similar Taxes (including any alternative minimum taxes) of such tax group that is attributable to the taxable income of the Borrower and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries for such purpose, in amounts required to pay any such Taxes that are attributable to the taxable income of such Unrestricted Subsidiaries; *provided* that (1) the aggregate amount of such payments with respect to such taxable period (regardless of when paid) shall not exceed the aggregate amount of such Taxes that the Borrower and its applicable Restricted Subsidiaries (and, subject to the limitation described above, any applicable Unrestricted Subsidiaries of the Borrower) would have been required to pay with respect to such taxable period were such entities stand-alone corporate taxpayers or a stand-alone corporate tax group for all relevant taxable periods and (2) any distributions pursuant to this Section 10.03(vi)(B) in respect of any taxable period ending on or prior to the Closing Date shall be permitted only to the extent they relate to a tax assessment, tax audit, or other tax proceeding after the Closing Date;

(C) payments under any domination and/or profit and loss pooling agreements;

(D) customary salary, bonus and other benefits payable to officers and employees of any Parent Company to the extent such salaries, bonuses and other benefits are reasonably attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(E) general corporate operating and overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) of any Parent Company to the extent such costs and expenses are reasonably attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(F) cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower or any Parent Company;

(G) the purchase or other acquisition by Holdings or any other Parent Company of the Borrower of all or substantially all of the property and assets or business of any Person, or of assets constituting a business unit, a line of business or division of such Person, or of all of the Equity Interests in a Person; *provided* that if such purchase or other acquisition had been made by the Borrower, it would have constituted a Permitted Acquisition permitted to be made pursuant to Section 9.14; *provided* that (A) such dividend, distribution, loan or advance shall be made concurrently with the closing of such purchase or other acquisition and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) and any liabilities assumed to be contributed to the Borrower or any Restricted Subsidiary or (2) the merger or amalgamation (to the extent permitted in Section 10.02) into the Borrower or any Restricted Subsidiary of the Person formed or acquired in order to consummate such purchase or other acquisition; and

(H) any customary fees and expenses related to any unsuccessful equity offering by any Parent Company directly attributable to the operations of the Borrower and its Restricted Subsidiaries;

(vii) reasonable and customary indemnities to directors, officers and employees of Holdings or any other Parent Company in the ordinary course of business, to the extent reasonably attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries;

(viii) the Borrower may authorize, declare and pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) for payment of (x) obligations under or in respect of director and officer insurance policies to the extent reasonably attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries or (y) indemnification obligations owing to the Sponsors under the Advisory Agreement;

(ix) any Dividend used (x) to fund the Transaction, including Transaction Costs, and (y) in order to satisfy deferred purchase price, earn-outs and contingent payments in respect of any amounts due and owing as provided for in the Acquisition Agreement;

(x) the Borrower may authorize, declare and pay cash Dividends to Holdings (who may subsequently authorize, declare and pay cash Dividends to any other Parent Company) so long as the proceeds thereof are used to pay the Sponsors fees, expenses and indemnification payments that are then permitted to be paid pursuant to Sections 10.06(v), 10.06(vii) and 10.06(xii);

(xi) repurchases of Equity Interests (i) deemed to occur upon exercise of stock options or warrants or similar equity incentive awards or (ii) in connection with a gross-up for tax withholding related to such Equity Interests;

(xii) a Dividend to any Parent Company to fund a payment of dividends on such Parent Company's common stock, not to exceed, in any fiscal year, the sum of (x) 6.0% of the net proceeds received by the Borrower (or by any direct or indirect parent of the Borrower and contributed to the Borrower) from any Equity Offerings of the Borrower or any direct or indirect parent of the Borrower (excluding any Equity Offerings in connection with the Transactions) and (y) 6.0% of such Parent Company's Market Capitalization;

(xiii) the Borrower may pay any Dividends so long as the Distribution Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Dividends;

(xiv) purchases of minority interests in Restricted Subsidiaries that are not Wholly-Owned Subsidiaries by the Borrower and the Guarantors; *provided* that the aggregate amount of such purchases, when added to the aggregate amount of Investments pursuant to Section 10.05(xvii), shall not exceed the greater of $20,000,000 and 6.0% of Consolidated EBITDA (measured at the time of such Dividend);

(xv) the authorization, declaration and payment of Dividends or the payment of other distributions by the Borrower in an aggregate amount since the Closing Date, not to exceed the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of such Dividend);

(xvi) the Borrower and each Restricted Subsidiary may authorize, declare and make Dividend payments or other distributions payable solely in the Equity Interests of such Person so long as in the case of Dividend or other distribution by a Restricted Subsidiary, the Borrower or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution;

(xvii) the Borrower may authorize, declare and pay Dividends with the cash proceeds contributed to its common equity from the net cash proceeds of any equity issuance by any Parent Company, so long as, with respect to any such payments, no Event of Default shall have occurred and be continuing or would result therefrom;

(xviii) the Borrower and any Restricted Subsidiary may authorize, declare and pay Dividends within 90 days after the date of declaration thereof, if at the date of declaration of such payment, such payment would have complied with another provision of this Section 10.03;

(xix) the declaration and payment of Dividends to holders of a class or series of Disqualified Stock of the Borrower or any Restricted Subsidiary or any preferred stock of any Restricted Subsidiary of the Borrower issued on or after the Closing Date;

(xx) any payment that is intended to prevent any Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code; and

(xxi) Dividends that are made with Excluded Contributions.

In determining compliance with this Section 10.03 (and in determining amounts paid as Dividends pursuant hereto for purposes of the definitions of "Consolidated EBITDA," "Consolidated Net Income" and "Consolidated Fixed Charge Coverage Ratio"), amounts loaned or advanced to Holdings pursuant to Section 10.05(vi) shall, to the extent such loan or advance remains unpaid, be deemed to be cash Dividends paid to Holdings to the extent provided in said Section 10.05(vi).

Notwithstanding anything to the contrary in this Section 10.03, the Borrower and its Restricted Subsidiaries shall not, directly or indirectly, sell or otherwise transfer any material Intellectual Property that is material to the operations of the Borrower and its Subsidiaries taken as a whole to any Unrestricted Subsidiary.

Section 10.04 Indebtedness. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(i) (x) Indebtedness incurred pursuant to this Agreement and the other Credit Documents (including pursuant to any Revolving Commitment Increase) and (y) Indebtedness incurred pursuant to the Secured Notes and the other Secured Notes Documents in an aggregate principal amount not to exceed $920,000,000 and any Permitted Refinancing Indebtedness in respect thereof;

(ii) Indebtedness under Swap Contracts entered into with respect to other Indebtedness permitted under this Section 10.04 so long as the entering into of such Swap Contracts are bona fide hedging activities and are not for speculative purposes;

(iii) Indebtedness of the Borrower and its Restricted Subsidiaries evidenced by Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) in connection with the acquisition, construction, installation, repair, replacement or improvement

of fixed or capital assets and any Permitted Refinancing Indebtedness in respect thereof; *provided* that in no event shall the aggregate principal amount of all such Indebtedness incurred or assumed in each case after the Closing Date pursuant to this clause (iii) (x) exceed the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of incurrence) (less amounts incurred pursuant to clause (y)) and (y) solely with respect to Capitalized Lease Obligations for Rental Equipment, exceed $100,000,000, in each case, at any one time outstanding;

(iv) [reserved];

(v) Indebtedness of a Restricted Subsidiary of the Borrower acquired pursuant to or incurred in connection with a Permitted Acquisition (or Indebtedness assumed at the time of a Permitted Acquisition of an asset securing such Indebtedness); *provided* that, (x) after giving *pro forma* effect to the incurrence or assumption thereof, the Consolidated Fixed Charge Coverage Ratio shall either be (I) at least 2.00 to 1.00 or (II) no worse than the Consolidated Fixed Charge Coverage Ratio prior to such incurrence or assumption, and (y) solely with respect to any such Indebtedness that is incurred in connection with a Permitted Acquisition, (i) such Indebtedness shall not require any payments of principal prior to three months after the Latest Maturity Date at the time of such incurrence and (ii) the agreement governing such Indebtedness shall not include (a) any financial maintenance covenants or (b) such Indebtedness shall not have any financial maintenance covenants or any other covenants more restrictive than those in this Agreement except for such covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect at the time such Indebtedness is incurred and any Permitted Refinancing Indebtedness in respect thereof; *provided*, *further*, that the amount of Indebtedness that may be incurred pursuant to this clause (v) by non-Credit Parties together with the amount of Indebtedness incurred by non-Credit Parties pursuant to clauses (xxvii) and (xxix) below shall not exceed the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time of incurrence) at any time outstanding;

(vi) intercompany Indebtedness and cash management pooling obligations and arrangements among the Borrower and its Restricted Subsidiaries to the extent permitted by Sections 9.17 and 10.05(vi);

(vii) Indebtedness outstanding on the Closing Date and listed on Schedule 10.04 (or to the extent not listed on such Schedule 10.04, where the outstanding principal amount of such Indebtedness is less than $5,000,000 in the aggregate) and any Permitted Refinancing Indebtedness in respect thereof;

(viii) Indebtedness (a) of Foreign Subsidiaries that are not Credit Parties; *provided* that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (viii)(a) shall not at any time exceed the greater of $50,000,000 and 15.0% of Consolidated EBITDA (measured at the time of incurrence) and (b) arising from secured local lines of credit of any Foreign Subsidiary that is not a Credit Party and is organized in a jurisdiction where no Collateral is located; *provided* that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (viii)(b) shall not at any time exceed the greater of $50,000,000 and 15.0% of Consolidated EBITDA (measured at the time of incurrence);

(ix) Contribution Indebtedness and any Permitted Refinancing Indebtedness in respect thereof;

(x) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(xi) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including in each case, Bank Product Debt;

(xii) [reserved];

(xiii) (x) Indebtedness incurred by a Securitization Entity in a Qualified Securitization Transaction permitted pursuant to Section 10.01(xxxix) that is not recourse to the Borrower or any Restricted Subsidiary other than a Securitization Entity (except for Standard Securitization Undertakings) and which such relevant Securitization Assets subject thereto consist solely of assets originated by one or more Foreign Subsidiaries (other than a Foreign Subsidiary organized in the jurisdiction

of a Credit Party) and (y) to the extent constituting Indebtedness, obligations incurred in connection with the disposition by a Foreign Subsidiary (other than a Foreign Subsidiary organized in the jurisdiction of a Credit Party) of any account receivable in connection with factoring or other similar arrangements consistent with past practices;

(xiv) Indebtedness consisting of obligations under deferred compensation (including indemnification obligations, obligations in respect of purchase price adjustments, earn-outs, incentive noncompetes and other contingent obligations) or other similar arrangements incurred or assumed in connection with the Acquisition or Acquisition Agreement, any Permitted Acquisition or any other Investment, in each case, permitted under this Agreement;

(xv) additional Indebtedness of the Borrower and its Restricted Subsidiaries not to exceed the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of incurrence) in aggregate principal amount outstanding at any time;

(xvi) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(xvii) Contingent Obligations to insurers required in connection with worker's compensation and other insurance coverage incurred in the ordinary course of business;

(xviii) guarantees made by the Borrower or any of its Restricted Subsidiaries of Indebtedness of the Borrower or any of its Restricted Subsidiaries permitted to be outstanding under this Section 10.04; *provided* that (x) such guarantees are permitted by Section 10.05 and (y) no Restricted Subsidiary that is not a Credit Party shall guarantee Indebtedness of a Credit Party pursuant to this clause (xviii);

(xix) guarantees made by any Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 10.04;

(xx) guarantees made by Restricted Subsidiaries acquired pursuant to a Permitted Acquisition of Indebtedness acquired or assumed pursuant thereto in accordance with this Section 10.04, or any refinancing thereof pursuant to this Section 10.04; *provided* that such guarantees may only be made by Restricted Subsidiaries who were guarantors of the Indebtedness originally acquired or assumed pursuant to this Section 10.04 at the time of the consummation of the Permitted Acquisition or such other Investment to which such Indebtedness relates;

(xxi) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 10.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xxii) guarantees of Indebtedness of directors, officers and employees of the Borrower or any of its Restricted Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes;

(xxiii) guarantees of Indebtedness of a Person in connection with a joint venture, *provided* that the aggregate principal amount of any Indebtedness so guaranteed that is then outstanding, when added to the aggregate amount of unreimbursed payments theretofore made in respect of such guarantees and the amount of Investments then outstanding (and deemed outstanding) under clause (xix) of Section 10.05, shall not exceed the greater of $40,000,000 and 12.0% of Consolidated EBITDA (measured at the time of incurrence);

(xxiv) [reserved];

(xxv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, to the extent such Indebtedness is extinguished reasonably promptly after receipt of notice thereof;

(xxvi) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former officers, employees and directors of the Borrower or its Restricted Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or stock-based compensation to current and former officers, employees and directors of the Borrower and the Restricted Subsidiaries and (z) Indebtedness consisting of promissory notes issued by any Credit Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of any Parent Company permitted by Section 10.03;

(xxvii) Permitted Junior Debt incurred under Permitted Junior Debt Documents in an amount not to exceed the sum of (a) $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of incurrence) and (b) an unlimited amount that would not cause the Consolidated Secured Net Leverage Ratio to exceed 4.00 to 1.00; *provided* that (i) all such Indebtedness is incurred in accordance with the requirements of the definition of "Permitted Junior Notes" or "Permitted Junior Loans," as the case may be, (ii) no Event of Default then exists or would result therefrom (*provided*, that with respect to any such Indebtedness incurred to finance a Limited Condition Transaction, such requirement shall be limited to the absence of an Event of Default pursuant to Section 11.01 or Section 11.05), (iii) any such Indebtedness incurred or guaranteed by a Credit Party is not secured by any assets of the Borrower or any Restricted Subsidiary that is not a Credit Party, (iv) to the extent such Indebtedness is unsecured, such Indebtedness shall be deemed secured solely for purposes of determining incurrence capacity under subclause (b) of this clause (xxvii), and (iv) the amount of Indebtedness that may be incurred pursuant to this clause (xxvii) by non-Credit Parties together with the amount of Indebtedness incurred by non-Credit Parties pursuant to clause (v) above and clause (xxix) below shall not exceed the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time of incurrence) at any time outstanding and any Permitted Refinancing Indebtedness in respect of the foregoing;

(xxviii) (x) guarantees made by the Borrower or any of its Restricted Subsidiaries of obligations (not constituting debt for borrowed money) of the Borrower or any of its Restricted Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party (other than Holdings) as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xxix) Permitted Junior Debt of the Borrower and its Restricted Subsidiaries incurred under Permitted Junior Debt Documents so long as (i) all such Indebtedness is incurred in accordance with the requirements of the definition of "Permitted Junior Notes" or "Permitted Junior Loans," as the case may be, (ii) no Event of Default then exists or would result therefrom (*provided*, that with respect to any such Indebtedness incurred to finance a Limited Condition Transaction, such requirement shall be limited to the absence of an Event of Default pursuant to Section 11.01 or Section 11.05), (iii) if secured, any such Indebtedness incurred or guaranteed by a Credit Party is not secured by any assets of the Borrower or any Restricted Subsidiary that is not a Credit Party, and (iv) the aggregate principal amount of such Permitted Junior Debt issued or incurred after the Closing Date shall not cause the Consolidated Fixed Charge Coverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period, to be less than 2.00 to 1.00 and any Permitted Refinancing Indebtedness in respect of the foregoing; *provided* that the amount of Permitted Junior Debt which may be incurred pursuant to this clause (xxix) by non-Credit Parties together with the amount of Indebtedness incurred by non-Credit Parties pursuant to clauses (v) and (xxvii) above shall not exceed the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time of incurrence) at any time outstanding;

(xxx) Indebtedness arising out of Sale-Leaseback Transactions permitted by Section 10.01(xviii);

(xxxi) unsecured Indebtedness of the Borrower or any Subsidiary Guarantor in the form of ESG (environmental, social and corporate governance) bonds in an aggregate principal amount, including all Indebtedness incurred to Refinance any Indebtedness incurred pursuant to this clause (xxxi), not to exceed the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time of incurrence), at any time outstanding, and any Permitted Refinancing Indebtedness in respect of the foregoing;

(xxxii) Indebtedness supported by a letter of credit or bank guarantee issued pursuant to this Agreement in a principal amount not in excess of the stated amount of such letter of credit; and

(xxxiii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxii) above.

The Borrower or any Restricted Subsidiary may incur Indebtedness permitted by this Section 10.04 (including, to the extent permitted by this Section 10.04, through the use of the same basket or other exception used to originally incur the debt securities being satisfied and discharged), to satisfy and discharge any debt securities permitted to be incurred by this Section 10.04 (including, without limitation, the Secured Notes), at the same time as such debt securities are outstanding, so long as the net proceeds of such Indebtedness are promptly deposited with the trustee to satisfy and discharge the applicable indenture (including, without limitation, the Secured Notes Indenture) in accordance with such debt securities.

Section 10.05 Advances, Investments and Loans. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, directly or indirectly, lend money or credit or make advances to any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person (each of the foregoing, an "Investment" and, collectively, "Investments" and with the value of each Investment being measured at the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Borrower and its Restricted Subsidiaries with respect thereto), except that the following shall be permitted (each of the following, a "Permitted Investment" and collectively, "Permitted Investments"):

(i) the Borrower and its Restricted Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Borrower or such Restricted Subsidiary;

(ii) the Borrower and its Restricted Subsidiaries may acquire and hold cash and Cash Equivalents;

(iii) the Borrower and its Restricted Subsidiaries may hold the Investments held by them on the Closing Date and described on Schedule 10.05(iii), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 10.05;

(iv) the Borrower and its Restricted Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization or other similar proceedings of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(v) the Borrower and its Restricted Subsidiaries may enter into Swap Contracts to the extent permitted by Section 10.04(ii);

(vi) (a) the Borrower and any Restricted Subsidiary may make intercompany loans to and other investments (including cash management pooling obligations and arrangements) in Credit Parties (other than Holdings, unless otherwise permitted by Section 10.03), including in connection with tax planning activities, so long as, after giving effect thereof, the security interest of the Collateral Agent for the benefit of the Secured Creditors in the Collateral, taken as a whole, is not materially impaired, (b) any Foreign Subsidiary may make intercompany loans to and other investments (including cash management pooling obligations and arrangements to the extent not in contravention of Section 9.17) in the Borrower or any of its Restricted Subsidiaries so long as in the case of such intercompany loans (other than cash management pooling obligations and arrangements) to Credit Parties (other than Holdings), all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent (for the avoidance of doubt, the terms of the Intercompany Subordination Agreement are reasonably satisfactory for the purposes of this clause (b)), (c) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments (including cash management pooling obligations and arrangements to the extent not in contravention of Section 9.17) in, Restricted Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other investments made pursuant to this subclause (c) does not exceed the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time of such loans, guarantees or incurrence), (d) any Restricted Subsidiary that is not a Credit Party may make intercompany loans to, and other investments (including cash management pooling obligations and arrangements) in,

any other Restricted Subsidiary that is also not a Credit Party and (e) Credit Parties may make intercompany loans and other investments (including cash management pooling obligations and arrangements to the extent not in contravention of Section 9.17) in any Restricted Subsidiary that is not a Credit Party so long as such Investment is part of a series of simultaneous Investments by Restricted Subsidiaries in other Restricted Subsidiaries that results in the proceeds of the initial Investment being invested in one or more Credit Parties (other than Holdings, unless otherwise permitted by Section 10.03);

(vii) Permitted Acquisitions shall be permitted in accordance with Section 9.14;

(viii) loans and advances by the Borrower and its Restricted Subsidiaries to officers, directors and employees of the Borrower and its Restricted Subsidiaries in connection with (i) business-related travel, relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person's purchase of Equity Interests of Holdings or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (ii) unless immediately repaid;

(ix) advances of payroll payments to employees of the Borrower and its Restricted Subsidiaries in the ordinary course of business;

(x) non-cash consideration may be received in connection with any sale of assets permitted pursuant to Section 10.02(ii) or (x);

(xi) additional Restricted Subsidiaries of the Borrower may be established or created if the Borrower and such Subsidiary comply with the requirements of Section 9.12, if applicable; *provided* that to the extent any such new Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Section 10.05, and such new Subsidiary at no time holds any assets or liabilities other than any merger or amalgamation consideration contributed to it contemporaneously with the closing of such transaction, such new Subsidiary shall not be required to take the actions set forth in Section 9.12, as applicable, until the respective acquisition is consummated (at which time the surviving or transferee entity of the respective transaction and its Subsidiaries shall be required to so comply in accordance with the provisions thereof);

(xii) extensions of trade credit may be made in the ordinary course of business (including advances made to distributors consistent with past practice), Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled Account Debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(xiii) earnest money deposits may be made to the extent required in connection with Permitted Acquisitions and other Investments to the extent permitted under Section 10.01(xxviii);

(xiv) Investments in deposit accounts or securities accounts opened in the ordinary course of business;

(xv) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(xvi) Investments in the ordinary course of business consisting of UCC Article 3 (or the equivalent under other applicable law) endorsements for collection or deposit;

(xvii) purchases of minority interests in Restricted Subsidiaries that are not Wholly-Owned Subsidiaries by the Borrower and the Guarantors; *provided* that the aggregate amount of such purchases, when added to the aggregate amount of Dividends pursuant to Section 10.03(xiv), shall not exceed the greater of $20,000,000 and 6.0% of Consolidated EBITDA (measured at the time such purchase is made);

(xviii) Investments (other than Permitted Acquisitions) so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Investments;

(xix) in addition to Investments permitted by clauses (i) through (xviii) and (xx) through (xxxiii) of this Section 10.05, the Borrower and its Restricted Subsidiaries may make additional loans, advances and other Investments to or in a Person (including a joint venture) in an aggregate outstanding amount for all loans, advances and other Investments made pursuant to this clause (xix), not to exceed the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time such Investment is made);

(xx) the licensing, sublicensing or contribution of Intellectual Property rights pursuant to arrangements with Persons other than the Borrower and the Restricted Subsidiaries in the ordinary course of business for fair market value, as determined by the Borrower or such Restricted Subsidiary, as the case may be, in good faith;

(xxi) loans and advances to any Parent Company in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Dividends made to any Parent Company), Dividends permitted to be made to any Parent Company in accordance with Section 10.03; *provided* that any such loan or advance shall reduce the amount of such applicable Dividends thereafter permitted under Section 10.03 by a corresponding amount (if such applicable subsection of Section 10.03 contains a maximum amount);

(xxii) Investments to the extent that payment for such Investments is made in the form of common Equity Interests or Qualified Preferred Stock of Holdings or any Equity Interests of any other direct or indirect Parent Company to the seller of such Investments;

(xxiii) Investments of a Person that is acquired and becomes a Restricted Subsidiary or of a company merged or amalgamated or consolidated into any Restricted Subsidiary, in each case after the Closing Date and in accordance with this Section 10.05 and/or Section 10.02, as applicable, to the extent such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, do not constitute a material portion of the aggregate assets acquired in such transaction and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(xxiv) Investments in a Restricted Subsidiary that is not a Credit Party or in a joint venture, in each case, to the extent such Investment is substantially contemporaneously repaid in full with a dividend or other distribution from such Restricted Subsidiary or joint venture;

(xxv) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business;

(xxvi) Investments by the Borrower and its Restricted Subsidiaries (A) consisting of deposits, prepayment and other credits to suppliers or landlords and (B) in connection with obtaining, maintaining or renewing client contracts, each made in the ordinary course of business;

(xxvii) guarantees made in the ordinary course of business of (a) obligations owed to landlords, suppliers, customers, franchisees and licensees of the Borrower or its Subsidiaries, (b) operating leases (for the avoidance of doubt, excluding Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness and (c) obligations under any Floor Plan Financings;

(xxviii) Investments consisting of the licensing, sublicensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;

(xxix) Investments in Unrestricted Subsidiaries having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other

Investments made pursuant to this Section 10.05(xxix) that are at that time outstanding not to exceed the greater of $125,000,000 and 37.5% of Consolidated EBITDA (measured at the time such Investment is made) at any one time outstanding so long as on the date of any such Investment no Event of Default has occurred and is continuing or would result therefrom;

(xxx) [reserved];

(xxxi) Investments by the Borrower and its Restricted Subsidiaries in joint ventures in an aggregate amount for all Investments made pursuant to this clause (xxxi), not to exceed, when added to the aggregate amount then guaranteed under clause (xxiii) of Section 10.04 and all unreimbursed payments theretofore made in respect of guarantees pursuant to clause (xxiii) of Section 10.04, the greater of $100,000,000 and 30.0% of Consolidated EBITDA (measured at the time such Investment is made) at any time outstanding;

(xxxii) Investments in a Securitization Entity or any Investment by a Securitization Entity in any other Person in connection with a Qualified Securitization Transaction permitted by Section 10.01(xxxix); *provided*, *however*, that (i) any such Investment in a Securitization Entity is in the form of (x) a contribution of additional Securitization Assets, (y) Limited Originator Recourse or (z) loans in respect of the noncash portion of the purchase price of Securitization Assets not to exceed 15% of such purchase price, (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Transaction or a Receivables Facility, as applicable, in each case permitted by Section 10.01(xxxix) and (iii) the Securitization Assets subject thereto consist solely of assets originated by one or more Foreign Subsidiaries (other than a Foreign Subsidiary organized in the jurisdiction of a Credit Party);

(xxxiii) repurchases of the Secured Notes or any Permitted Refinancing Indebtedness in respect thereof;

(xxxiv) Investments in any Person to which the Borrower or any Restricted Subsidiary outsources operational activities or otherwise related to the outsourcing of operational activities in the ordinary course of business in an aggregate amount not to exceed $15,000,000 at any one time outstanding; and

(xxxv) the Transactions.

To the extent an Investment is permitted to be made by a Credit Party directly in any Restricted Subsidiary or any other Person who is not a Credit Party (each such Person, a "Target Person") under any provision of this Section 10.05, such Investment may be made by advance, contribution or distribution by a Credit Party to a Restricted Subsidiary or Holdings, and further advanced or contributed by such Restricted Subsidiary or Holdings for purposes of making the relevant Investment in the Target Person without constituting an additional Investment for purposes of this Section 10.05 (it being understood that such Investment must satisfy the requirements of, and shall count toward any thresholds in, a provision of this Section 10.05 as if made by the applicable Credit Party directly to the Target Person).

Section 10.06 Transactions with Affiliates. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Borrower or any of its Subsidiaries involving aggregate payments or consideration in excess of the greater of $30,000,000 and 10.0% of Consolidated EBITDA, other than on terms and conditions deemed in good faith by the board of directors of the Borrower (or any committee thereof) to be not less favorable to the Borrower or such Restricted Subsidiary as would reasonably be obtained by the Borrower or such Restricted Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except:

(i) Dividends (and loans and advances in lieu thereof) may be paid to the extent provided in Section 10.03;

(ii) loans and other transactions among Holdings, the Borrower and its Restricted Subsidiaries (and any Parent Company) may be made;

(iii) customary fees and indemnification (including the reimbursement of out-of-pocket expenses) may be paid to directors of Holdings, the Borrower and its Restricted Subsidiaries (and, to the extent directly attributable to the operations of the Borrower and the other Restricted Subsidiaries, to any other Parent Company);

(iv) the Borrower and its Restricted Subsidiaries may enter into, and may make payments under, employment or other service related agreements, employee benefits plans, stock option plans, indemnification provisions, stay bonuses, severance and other similar compensatory arrangements with current and former officers, employees, consultants and directors of Holdings, the Borrower and its Restricted Subsidiaries in the ordinary course of business;

(v) so long as no Event of Default shall exist (both before and immediately after giving effect thereto) under Section 11.01 or 11.05, Holdings and/or the Borrower may pay fees to the Sponsors (or dividend such funds to any Parent Company to be paid to the Sponsors) in an amount not to exceed $5,000,000 in any calendar year and perform its other obligations pursuant to the terms of the Advisory Agreement as in effect on the Closing Date, subject to amendments not adverse to the Lenders in any material respect; *provided*, *further*, that upon the occurrence and during the continuance of Event of Default under Section 11.01 or 11.05, such amounts may accrue on a subordinated basis, but not be payable in cash during such period, but all such accrued amounts (*plus* accrued interest, if any, with respect thereto) may be payable in cash upon the cure or waiver of such Event of Default;

(vi) the Transaction (including Transaction Costs) shall be permitted, and all agreements entered into among the Acquired Companies and the Permitted Holders in connection with the Acquisition shall be permitted;

(vii) the Borrower may make payments (or make dividends to Holdings or any other Parent Company to make payments) (i) to reimburse the Sponsors for their reasonable out-of-pocket expenses, and to indemnify them, pursuant to the terms of the Advisory Agreement, as in effect on the Closing Date, subject to amendments not adverse to the Lenders in any material respect and (ii) to reimburse any shareholders for their respective reasonable out-of-pocket expenses, and to indemnify them, pursuant to the terms of any stockholders agreement with respect to Holdings or any other Parent Company, as in effect on the Closing Date, subject to amendments not materially adverse to the Lenders in any material respect;

(viii) transactions described on Schedule 10.06(viii) or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(ix) Investments in the Borrower's Subsidiaries and joint ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such Subsidiary or joint venture) to the extent otherwise permitted under Section 10.05;

(x) any payments required to be made pursuant to the Acquisition Agreement;

(xi) transactions between the Borrower and any Person that is an Affiliate solely due to the fact that a director of such Person is also a director of the Borrower or any Parent Company; *provided*, *however*, that such director abstains from voting as a director of the Borrower or such Parent Company, as the case may be, on any matter involving such other Person;

(xii) payments by Holdings, the Borrower or any of its Restricted Subsidiaries to the Sponsors or any Parent Company for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with the acquisitions or divestitures, which payments are approved by a majority of the board of directors of the Borrower in good faith;

(xiii) transactions with joint ventures entered into in the ordinary course of business;

(xiv) guarantees of performance by the Borrower and its Restricted Subsidiaries of Unrestricted Subsidiaries in the ordinary course of business, except for guarantees of Indebtedness in respect of borrowed money;

(xv) the issuance of Equity Interests in the form of common stock or Qualified Preferred Stock of the Borrower to the Sponsors or any Parent Company, or to any director, officer, employee or consultant thereof;

(xvi) the entry into any tax-sharing arrangements between the Borrower or any of its Restricted Subsidiaries and any of their direct or indirect parents; *provided*, *however*, that any payment made by the Borrower or any of its Restricted Subsidiaries under such tax-sharing arrangements is, at the time made, otherwise permitted hereunder;

(xvii) transactions with Unrestricted Subsidiaries, customers, clients, lessors, landlords, suppliers, contractors, or purchasers or sellers of goods or services that are Affiliates, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Restricted Subsidiaries, or made in the reasonable determination of senior management or the board of directors of the Borrower or any direct or indirect parent of the Borrower;

(xviii) to the extent not otherwise prohibited by this Agreement, transactions between or among Holdings, the Borrower and any of its Restricted Subsidiaries shall be permitted (including equity issuances); and

(xix) the entry into any domination and/or profit and loss pooling agreements.

Notwithstanding anything to the contrary contained above in this Section 10.06, (a) in no event shall the Borrower or any of its Restricted Subsidiaries pay any management, consulting or similar fee to the Sponsors or any Affiliate of the Sponsors except as specifically provided in clauses (v) and (vii) of this Section 10.06 and (b) the Borrower and its Restricted Subsidiaries shall not, directly or indirectly, sell or otherwise transfer any Intellectual Property that is material to the operations of the Borrower and its Subsidiaries taken as a whole to any Unrestricted Subsidiary.

Section 10.07 Limitations on Payments, Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.

The Borrower will not, and will not permit any of the Restricted Subsidiaries to:

(a) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing money or securities with the trustee with respect thereto or any other Person before due for the purpose of paying when due), any Indebtedness under any Permitted Junior Debt or Subordinated Indebtedness, in an outstanding aggregate principal amount greater than the greater of $30,000,000 and 10.0% of Consolidated EBITDA, except that (A) the Borrower may consummate the Transaction, (B) any payment that is intended to prevent any Permitted Junior Debt or Subordinated Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code may be made and (C) any Permitted Junior Debt and Subordinated Indebtedness may be repaid, redeemed, repurchased or defeased (and any applicable deposit of money or securities with the trustee with respect thereto or any other Person for the purpose of paying such Permitted Junior Debt or Subordinated Indebtedness when due may be made), (i) so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the consummation of the proposed repayment or prepayment and (ii) in an aggregate amount not to exceed the greater of $150,000,000 and 45.0% of Consolidated EBITDA (measured at the time such payment, prepayment, redemption or acquisition is made); *provided* that nothing herein shall otherwise prevent the Borrower and its Restricted Subsidiaries from refinancing the Permitted Junior Debt or Subordinated Indebtedness, in each case with Permitted Refinancing Indebtedness;

(b) amend or modify, or permit the amendment or modification of any provision of, any Secured Notes Document other than any amendment or modification that is not materially adverse to the interests of the Lenders

(c) make any voluntary or optional payment or prepayment on any indebtedness under any Floor Plan Financing in an outstanding aggregate principal amount greater than $50,000,000, other than (A) repayments when due and (B) additional prepayments so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the consummation of the proposed prepayment;

(d) amend or modify, or permit the amendment or modification of any provision of, any Permitted Junior Debt Document (after the entering into thereof) with a principal amount in excess of the Threshold Amount, other than any amendment or modification that is not materially adverse to the interests of the Lenders; or

(e) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation) or certificate of formation; limited liability company agreement or by-

laws (or the equivalent organizational documents); accounting policies or reporting policies (except as required by U.S. GAAP), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this clause (d) is not materially adverse in the aggregate to the interests of the Lenders.

Section 10.08 Limitation on Certain Restrictions on Subsidiaries. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Borrower or any of its Restricted Subsidiaries, (b) make loans or advances to the Borrower or any of its Restricted Subsidiaries or (c) transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents, the Secured Notes Indenture and the other definitive documentation entered into in connection with any of the foregoing;

(iii) [reserved];

(iv) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Borrower or any of its Restricted Subsidiaries;

(v) customary provisions restricting assignment of any licensing agreement (in which the Borrower or any of its Restricted Subsidiaries is the licensee) or other contract entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(vi) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vii) any agreement or instrument governing Indebtedness assumed in connection with a Permitted Acquisition, to the extent the relevant encumbrance or restriction was not agreed to or adopted in connection with, or in anticipation of, the respective Permitted Acquisition and does not apply to the Borrower or any Restricted Subsidiary of the Borrower, or the properties of any such Person, other than the Persons or the properties acquired in such Permitted Acquisition;

(viii) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(ix) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary that is not a Credit Party incurred pursuant to Section 10.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;

(x) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vii) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Borrower or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vii);

(xi) restrictions on the transfer of any asset subject to a Lien permitted by Section 10.01;

(xii) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Restricted Subsidiary of the Borrower that is not a Credit Party, which Indebtedness is permitted by Section 10.04;

(xiii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 10.05 and applicable solely to such joint venture;

(xiv) on or after the execution and delivery thereof, the Permitted Junior Debt Documents;

(xv) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established hereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis; and

(xvi) restrictions and conditions under the terms of the documentation governing any Qualified Securitization Transaction or a Receivables Facility that, in each case, permitted by Section 10.01(xxxix), are necessary or advisable, in the good faith determination of the Borrower or the applicable Restricted Subsidiary, to effect such Qualified Securitization Transaction or such Receivables Facility.

Section 10.09 Business.

(a) The Borrower will not permit at any time the business activities taken as a whole conducted by the Borrower and its Restricted Subsidiaries to be materially different from the business activities taken as a whole conducted by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) except that the Borrower and its Restricted Subsidiaries may engage in any Similar Business.

(b) Holdings will not engage in any business other than its ownership of the capital stock of, and the management of, the Borrower and, indirectly, its Subsidiaries and activities incidental thereto; *provided* that Holdings may engage in those activities that are incidental to (i) the maintenance of its existence in compliance with applicable law, (ii) legal, tax and accounting matters in connection with any of the foregoing or following activities, (iii) the entering into, and performing its obligations under, this Agreement, the other Credit Documents to which it is a party, the Acquisition Agreement, the Advisory Agreement, the Secured Notes Indenture and the other definitive documentation entered into in connection with any of the foregoing, (iv) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (v) the making of dividends or distributions on its Equity Interests, (vi) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (vii) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (viii) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (ix) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (x) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on its behalf), (xi) the consummation of the Transaction, (xii) the making of loans to or other Investments in, or incurrence of Indebtedness from, the Borrower or in the case of incurrence of Indebtedness, from any Wholly-Owned Domestic Subsidiary, which is a Credit Party, as and to the extent not prohibited by this Agreement and (xiii) any other activity expressly contemplated by this Agreement to be engaged in by Holdings, including, without limitation, repurchases of Indebtedness of the Borrower under this Agreement pursuant to Section 2.19 and entry into and performance of guarantees of Permitted Junior Debt and, subject to any applicable limitations set forth herein, other permitted Indebtedness of the Borrower and its Restricted Subsidiaries.

Section 10.10 Negative Pledges. Holdings and the Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the Intercreditor Agreement, any Additional Intercreditor Agreement or any other intercreditor agreement contemplated by this Agreement, and except that this Section 10.10 shall not apply to:

(i) any covenants contained in this Agreement or any other Credit Documents or that exist on the Closing Date;

(ii) covenants existing under the Secured Notes Indenture, as in effect on the Closing Date (or as amended in a manner consistent with any amendment to this Agreement or the other Credit Documents), and the other definitive documentation entered into in connection with the foregoing;

(iii) the covenants contained in any Permitted Junior Debt (so long as same do not restrict the granting of Liens to secure Indebtedness pursuant to this Agreement);

(iv) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(v) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(vi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures that are applicable solely to such joint venture;

(vii) restrictions imposed by law;

(viii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale; *provided* such restrictions and conditions apply only to the Person or property that is to be sold;

(ix) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(x) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established hereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis;

(xi) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(xii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xiii) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (iii), (ix), (x) and (xi) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 10.11 Financial Covenant.

(a) The Borrower and its Restricted Subsidiaries shall, on any date when Specified Excess Availability is less than the greater of (a) 10.0% of the Line Cap, and (b) $60,000,000 (the "FCCR Test Amount"), have a Consolidated Fixed Charge Coverage Ratio of at least 1.00 to 1.00, tested for the four fiscal quarter period ending on the last day of the most recently ended fiscal quarter for which the Borrower was required to deliver Section 9.01 Financials, and at the end of each succeeding fiscal quarter thereafter until the date on which Specified Excess Availability has exceeded the FCCR Test Amount for 30 consecutive days.

(b) For purposes of determining compliance with the financial covenant set forth in Section 10.11(a) above, cash equity contributions (which equity shall be common equity or otherwise in a form reasonably acceptable to the Administrative Agent) made to Holdings (which shall be contributed in cash to the common equity of the Borrower) after the end of the relevant fiscal quarter and on or

prior to the day that is 10 Business Days after financial statements are required to be delivered under Section 9.01 for such fiscal quarter, or with respect to the initial date the FCCR Test Amount is not exceeded, within 10 Business Days after the Borrower and its Restricted Subsidiaries become subject to testing the financial covenant under clause (a) of this Section 10.11 (such 10-Business Day period being referred to herein as the "Interim Period") will, at the request of the Borrower, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such financial covenant at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a "Specified Equity Contribution"); *provided* that (a) Specified Equity Contributions may be made no more than two times in any twelve fiscal month period and no more than five times during the term of this Agreement, (b) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Borrower to be in *pro forma* compliance with such financial covenant, (c) the Borrower shall not be permitted to borrow hereunder or request the issuance, amendment, modification, renewal or extension of a Letter of Credit (other than any amendment, modification, renewal or extension which does not increase the face amount thereof) during the Interim Period until the relevant Specified Equity Contribution has been made, (d) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets calculated on the basis of Consolidated EBITDA contained herein and in the other Credit Documents, (e) there shall be no *pro forma* in Indebtedness with the proceeds of any Specified Equity Contribution for determining compliance with the financial covenant for the fiscal quarter with respect to which such Specified Equity Contribution is made and (f) until the last Business Day of the Interim Period, neither the Administrative Agent nor any Lender shall have any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent nor any Lender shall have any right to foreclose on or take possession of the Collateral or any other right or remedy under the Credit Documents that would be available on the basis of an Event of Default resulting from the failure to comply with Section 10.11(a).

Section 10.12 Specified Floor Plan Companies. Notwithstanding anything to the contrary herein, (i) no Specified Floor Plan Company shall own any assets that are included in the Borrowing Base, (ii) no Specified Floor Plan Company shall engage in the business of leasing or renting Rental Equipment and (iii) no Credit Party other than a Specified Floor Plan Company may grant a lien in favor of any provider of Floor Plan Financing.

ARTICLE 11 Events of Default. Upon the occurrence of any of the following specified events (each, an "Event of Default"):

Section 11.01 Payments. The Borrower shall (i) default in the payment when due of any principal of any Loan or (ii) default, and such default shall continue unremedied for five (5) or more Business Days, in the payment when due of any interest on any Loan, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

Section 11.02 Representations, etc.

Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent, the Collateral Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

Section 11.03 Covenants. Holdings, the Borrower or any Restricted Subsidiary shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.01(f)(i), 9.02(b), 9.04 (as to the Borrower), 9.11, 9.14(a), 9.17(c), (d), (e) or (f) (other than any such default which is not directly caused by the action or inaction of Holdings, the Borrower or any of its Restricted Subsidiaries, which such default shall be subject to clause (iii) below) or Article 10, (ii) fail to deliver a Borrowing Base Certificate required to be delivered pursuant to Section 9.17(a) within five (5) Business Days of the date such Borrowing Base Certificate is required to be delivered (other than during the occurrence of a Liquidity Event, in which case such period shall be three (3) Business Days), (iii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 11.01 and 11.02), and such default shall continue unremedied for a period of 30 days after written notice thereof to the Borrower by the Administrative Agent, the Collateral Agent or the Required Lenders; or

Section 11.04 Default Under Other Agreements. (i) Holdings, the Borrower or any of the Restricted Subsidiaries shall (x) default in any payment of any Indebtedness (other than Indebtedness under this Agreement) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than Indebtedness under this Agreement) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or

condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity or (ii) any Indebtedness (other than Indebtedness under this Agreement) of Holdings, the Borrower or any of the Restricted Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; *provided* that (A) it shall not be a Default or an Event of Default under this Section 11.04 unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount (or in the case of Floor Plan Financing, $75,000,000) and (B) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of, or Recovery Event with respect to, the property or assets securing such Indebtedness, if such sale or transfer or Recovery Event is otherwise permitted hereunder; or

Section 11.05 Bankruptcy, etc.

Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) under the Bankruptcy Code, and the petition is not dismissed within 60 days after commencement of the case; or a custodian (as defined in the Bankruptcy Code), receiver, receiver-manager, trustee, monitor is appointed for, or takes charge of, all or substantially all of the property of Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary), or Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) commences any other case or proceeding under any Debtor Relief Law or similar law of any jurisdiction whether now or hereafter in effect relating to Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary), or there is commenced against Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) any such case or proceeding under any Debtor Relief Law or similar law of any jurisdiction which remains undismissed for a period of 60 days, or Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Holdings or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) suffers any appointment of any custodian, receiver, interim receiver, receiver-manager, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) for the purpose of effecting any of the foregoing; or

Section 11.06 ERISA; Canadian Pension Plans. (a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect, (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect, (c) a Canadian Pension Plan has failed to comply with, or be funded in accordance with, Canadian law which has resulted or would reasonably be expected to result in a Material Adverse Effect, or (d) a Canadian Pension Event has occurred that has resulted or would reasonably be expected to result in a Material Adverse Effect;

Section 11.07 Security Documents. Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Creditors the Liens, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein)), a perfected security interest, to the extent required by the Credit Documents, in, and Lien on, all or any material portion of the Collateral (other than as a result of the failure of the Collateral Agent to file continuation statements or the failure of the Collateral Agent to maintain possession of possessory collateral delivered to it), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 10.01); or

Section 11.08 Credit Document. Any Credit Document (other than a Security Document) shall cease to be in full force and effect as to any Credit Party (other than any Credit Party otherwise qualifying as an Immaterial Subsidiary, whether or not so designated), or any Credit Party or any Person acting for or on behalf of such Credit Party shall deny or disaffirm in writing such Credit Party's obligations under such Credit Document to which it is a party; or

Section 11.09 Judgments. One or more judgments or decrees shall be entered against Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of the Borrower involving in the aggregate for Holdings, the Borrower and its Restricted Subsidiaries (other than any Immaterial Subsidiary) a liability or liabilities (not paid or fully covered (other than to the extent of

any deductible) by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 60 consecutive days, and the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered (other than to the extent of any deductible) by such insurance company) equals or exceeds the Threshold Amount;

Section 11.10 Change of Control. A Change of Control shall occur;

then and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent, upon the written request of the Required Lenders, shall by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party (*provided* that, if an Event of Default specified in Section 11.05 shall occur with respect to the Borrower, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the Revolving Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (iii) enforce, or instruct the Collateral Agent to enforce, all of the Liens and security interests created pursuant to the Security Documents; (iv) enforce each Guaranty; (v) terminate, reduce or condition any Revolving Commitment, or make any adjustment to the Borrowing Base; and (vi) require the Credit Parties to Cash Collateralize LC Obligations, and, if the Credit Parties fail promptly to deposit such Cash Collateral, the Administrative Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolving Loans (whether or not an Overadvance exists or is created thereby, or the conditions in Section 7.01 are satisfied).

Section 11.11 Application of Funds. After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be Cash Collateralized as set forth above), any amounts received on account of the Obligations (including without limitation, proceeds received by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral (including, without limitation, pursuant to the exercise by the Collateral Agent of its remedies during the continuance of an Event of Default) or otherwise received on account of the Obligations) shall, subject to the provisions of Sections 2.11 and 2.13(j), be applied ratably by the Administrative Agent in the following order:

First, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization, if any, including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith;

Second, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Creditors in connection therewith (other than in respect of Secured Bank Product Obligations);

Third, to interest then due and payable on any Swingline Loan;

Fourth, (x) to the principal balance of the Swingline Loan outstanding until the same has been prepaid in full and (y) to the principal balance of Protective Advances outstanding, until paid in full;

Fifth, to interest then due and payable on Revolving Loans and other amounts due pursuant to Sections 3.01, 3.02, and 5.01;

Sixth, to Cash Collateralize all LC Exposures (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) *plus* any accrued and unpaid interest thereon;

Seventh, to the principal balance of Revolving Borrowings then outstanding and all Obligations on account of Noticed Hedges with Secured Creditors, *pro rata*;

Eighth, to all other Obligations *pro rata*; and

Ninth, the balance, if any, as required by the Intercreditor Agreement or any Additional Intercreditor Agreement or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns).

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Creditor. If a Secured Creditor fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Seventh of this Section 11.11, the Credit Parties shall remain liable for any deficiency. Notwithstanding the foregoing provisions, this Section 11.11 is subject to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in this Section 11.11.

ARTICLE 12 The Administrative Agent and the Collateral Agent.

Section 12.01 Appointment and Authorization.

(a) Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 12 (other than Sections 12.08, 12.10 and 12.11) are solely for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Each of the Lenders (on behalf of itself and its Affiliates and branches, including in its capacity as Secured Bank Product Provider) hereby irrevocably appoints and authorizes Bank of America to act as the "collateral agent" and "security trustee" of such Lender hereunder and under the other Credit Documents for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any Credit Party to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto, it being understood that the provisions of this Article 12 apply to the Collateral Agent in its capacity as such and references to Administrative Agent in the rest of this Article 12 shall be interpreted accordingly to include references to the Collateral Agent. The Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent or Collateral Agent pursuant to Section 12.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article 12 and Article 13 (including Section 13.01, as though such co-agents, sub-agents and attorneys-in-fact were the "Collateral Agent" or "security trustee" under the Credit Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and/or the Collateral Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Guaranteed Creditors with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent to enter into the Intercreditor Agreements and any Additional Intercreditor Agreement and any other intercreditor agreement or arrangement or supplement thereto permitted under this Agreement without any further consent by any Lender and any such intercreditor agreement shall be binding upon the Lenders.

(d) In its capacity as Collateral Agent, for the purposes of holding any hypothec granted pursuant to the laws of the Province of Quebec, each of the Lenders (on behalf of itself and its Affiliates and branches, including in its capacity as Secured Bank Product Provider) hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the hypothecary representative of the Lenders as contemplated under Article 2692 of the Civil Code of Quebec, and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Collateral Agent under any related deed of hypothec. The Collateral Agent shall have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Collateral Agent pursuant to any such deed of hypothec and applicable Law. Any person who becomes a Lender shall, by its execution of an Assignment and Assumption, be deemed to have consented to and confirmed the Collateral Agent as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Collateral Agent in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Article 12 also constitute the substitution of the Collateral Agent as hypothecary representative as aforesaid.

Section 12.02 Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent and/or the Collateral. The Administrative Agent, the Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 12 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent, the Collateral 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 and as Collateral Agent, as applicable. The Administrative Agent or Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents, except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

Section 12.03 Exculpatory Provisions. The Administrative Agent and the Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and the Collateral Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent and/or the Collateral Agent are required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents); *provided* that neither the Administrative Agent nor the Collateral Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or the Collateral Agent, as applicable, to liability or that is contrary to any Credit Document or applicable law;

(c) shall not, except as expressly set forth herein and in the other Credit 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 the Person serving as the Administrative Agent, the Collateral Agent or any of their respective Affiliates or branches in any capacity;

(d) shall not be liable to any Lender 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 and/or the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article 11 and Section 13.12) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. Neither the Administrative Agent nor the Collateral Agent shall

be deemed to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent and the Collateral Agent by the Borrower or a Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article 6, Article 7 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent and/or the Collateral Agent.

Section 12.04 Reliance by Administrative Agent and Collateral Agent. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each of the Administrative Agent and the Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the 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 (excluding counsel for the Borrower), accountants or experts.

Section 12.05 No Other Duties, etc.

Anything herein to the contrary notwithstanding, none of the Lead Arrangers or any of their respective Affiliates or branches shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder.

Section 12.06 Non-reliance on Administrative Agent, Collateral Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent, any arranger of this credit facility or any amendment thereto or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any arranger of this credit facility or any amendment thereto or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 12.07 Indemnification by the Lenders. To the extent that the Borrower for any reason fail to pay any amount required under Section 13.01(a) to be paid by them to the Administrative Agent or the Collateral Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent or the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (based on the amount of then outstanding Loans held by each Lender or, if the Loans have been repaid in full, based on the amount of outstanding Loans held by each Lender immediately prior to such repayment in full) of (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or the Collateral Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 12.07 are subject to the provisions of Section 5.01.

Section 12.08 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and

the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates and branches may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 12.09 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any case or proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such case or proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, fees, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.05 and 13.01) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property or distribution payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, interim receiver, monitor, assignee, trustee, liquidator, administrator, examiner, sequestrator, debtor, debtor-in-possession or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments or distributions to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments or distributions directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.05 and 13.01.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any Plan of Reorganization affecting the Obligations or the rights of any Lender or any Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank or in any such case or proceeding.

The Secured Creditors hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to (subject to the Intercreditor Agreement) 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 comparable provisions of any other applicable Debtor Relief Laws or any similar laws in any other jurisdictions to which a Credit Party is subject or (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Creditors shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a)(i) through (a)(ii) of Section 13.04 of this Agreement), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt

credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders *pro rata* and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Creditor or any acquisition vehicle to take any further action.

Section 12.10 Resignation of the Agents.

(a) Each of the Administrative Agent and the Collateral Agent may resign as the Administrative Agent or Collateral Agent, as applicable, upon 30 days' written notice to the Lenders and the Borrower; *provided* that, if at the time of such resignation, there is a successor Administrative Agent or Collateral Agent, as applicable, satisfactory to each of the resigning Agent, the incoming Agent and the Borrower, each, in its sole discretion, then the resigning Agent, the incoming Agent and the Borrower may agree to waive or shorten the 30 day notice period. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders (and consented to by the Borrower, to the extent so required) and shall have accepted such appointment within 30 days after the retiring Administrative Agent or retiring Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or retiring Collateral Agent, as applicable, may, with the Borrower's consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), on behalf of the Lenders, appoint a successor Administrative Agent or successor Collateral Agent, as applicable, in each case meeting the qualifications set forth above; *provided* that if the Administrative Agent or the Collateral Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment within such period, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent or retiring Collateral Agent, as applicable shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Credit Documents, the retiring Collateral Agent shall continue to hold such collateral security solely for purposes of maintaining the Secured Creditors' security interest thereon until such time as a successor Collateral Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent or the Collateral Agent, as applicable, shall instead be made by or to each Lender directly, until such time as the Required Lenders (with the consent of the Borrower, to the extent so required) appoint a successor Administrative Agent or Collateral Agent, as applicable, as provided for above in this Section 12.10. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or the retiring (or retired) Collateral Agent, as applicable, and the retiring Administrative Agent or retiring Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section 12.10). After the retiring Administrative Agent's or retiring Collateral Agent's resignation hereunder and under the other Credit Documents, the provisions of this Article 12 and Section 13.01 shall continue in effect for the benefit of such retiring Administrative Agent, or retiring Collateral Agent, as applicable, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent or retiring Collateral Agent, as applicable, was acting as Administrative Agent or Collateral Agent.

(b) Any resignation by Bank of America as administrative agent pursuant to this Section 12.10 shall also constitute its resignation as lender of the Swingline Loans to the extent that Bank of America is acting in such capacity at such time. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring lender of the Swingline Loans and (ii) the retiring lender of the Swingline Loans shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents.

Section 12.11 Collateral Matters and Guaranty Matters.

(a) The Lenders and the Issuing Banks irrevocably authorize the Administrative Agent and the Collateral Agent, as applicable (and subject to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement),

(i) to release any Lien on any property granted to or held by the Collateral Agent under any Credit Document (A) upon termination of the Revolving Commitments and payment in full of all Obligations (other than (i) contingent indemnification obligations and expense reimbursement obligations which are not then due and payable and (ii) Secured Bank Product Obligations except to the extent then due and payable and then entitled to payment in accordance with Section 11.11)

and the expiration or termination of all Letters of Credit (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent), (B) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (C) subject to Section 13.12, if approved, authorized or ratified in writing by the Required Lenders, (D) that constitutes Excluded Collateral or that becomes Excluded Collateral in connection with the provisions of the Floor Plan Financings, or (E) if the property subject to such Lien is owned by a Subsidiary Borrower or Subsidiary Guarantor, subject to Section 13.12, upon release of such Subsidiary Borrower or Subsidiary Guarantor from its obligations under this Agreement and the Guaranty Agreement pursuant to clause (ii) below;

(ii) to release any Subsidiary Borrower from its obligations under this Agreement or any Subsidiary Guarantor from its obligations under the Guaranty Agreement if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder;

(iii) at the request of the Borrower, to subordinate any Lien on any property (other than any assets included in the Borrowing Base) granted to or held by the Collateral Agent or Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Sections 10.01 (vi) or (xiv) or any other Lien that is expressly permitted by Section 10.01 to be senior to the Lien securing the Obligations or to release, and to execute and/or deliver documents to evidence the release or non-existence of, any Lien securing the Obligations upon the incurrence of any Lien permitted by Section 10.01 with respect to specified assets (other than any assets included in the Borrowing Base) if the Lien securing the Obligations is not allowed by the documentation creating such Lien or related documentation; and

(iv) to, without the input or consent of the other Lenders, (1) negotiate the form of any Security Document as may be necessary or appropriate in the opinion of the Administrative Agent and the Borrower to comply with this Agreement, and (2) execute, deliver and perform any new Security Document or intercreditor agreement or amendment to any Security Document or intercreditor agreement or enter into any amendment to the Security Documents or intercreditor agreement as may be necessary or appropriate in the opinion of the Administrative Agent and the Borrower.

(b) Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's and Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 12.11. In each case as specified in this Section 12.11, the Administrative Agent and Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Credit Party such documents, including (without limitation) termination or partial release statements, as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Credit Documents and this Section 12.11.

The Administrative Agent and the Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's and the Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 12.12 Bank Product Providers. Each Secured Bank Product Provider agrees to be bound by this Article 12 to the same extent as a Lender hereunder. Each such Secured Bank Product Provider shall indemnify and hold harmless the Administrative Agent and the Collateral Agent, to the extent not reimbursed by the Credit Parties, against all claims that may be incurred by or asserted against the Administrative Agent and the Collateral Agent in connection with such provider's Secured Bank Product Obligations.

Section 12.13 Withholding Taxes. To the extent required by any applicable Requirements of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after

written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by any Credit Party pursuant to Section 5.01 and without limiting or expanding the obligation of any Credit Party to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any amounts at any time owing to such Lender under this Agreement, any other Credit Document or otherwise against any amount due the Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For purposes of this Section 12.14, the term "Lender" includes any Issuing Bank.

Section 12.14 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

Section 12.15 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any Issuing Bank (each, a "Lender Party"), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Party promptly upon determining that any payment made to such Lender Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE 13 Miscellaneous.

Section 13.01 Payment of Expenses, etc.

(a) The Credit Parties hereby jointly and severally agree, from and after the Closing Date, to: (i) pay all reasonable invoiced out-of-pocket costs and expenses of the Agents and Issuing Banks (limited, in the case of legal expenses, to the reasonable fees and disbursements of one primary counsel to all Agents and Issuing Banks and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions)) in connection with (x) the preparation, execution, enforcement and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, (y) the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective) and (z) their syndication efforts with respect to this Agreement; (ii) pay all reasonable invoiced out-of-pocket fees, costs and expenses of the Agents, each Lender and each Issuing Bank in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings (limited, in the case of legal expenses, to one primary counsel to all Agents, Lenders and Issuing Banks to be retained by the Administrative Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and, in the case of an actual or perceived conflict of interest where any Indemnified Person affected by such conflict informs the Borrower of such conflict, of a single additional firm of counsel in each relevant jurisdiction for all similarly situated affected Indemnified Persons); (iii) pay and hold each Agent, each Lender and each Issuing Bank harmless from and against any Other Taxes with respect to the foregoing matters and save each Agent, each Issuing Bank and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Agent, such Lender or such Issuing Bank) to pay such Other Taxes; and (iv) indemnify each Agent and each Lender, each Issuing Bank and their respective Affiliates and branches, and the partners, shareholders, officers, directors, employees, agents, trustees, representatives and investment advisors of each of the foregoing, in each case, together with their respective successors and assigns of all persons constituting "Indemnified Persons" (each, an "Indemnified Person") from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) (but excluding Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and disbursements arising from a non-Tax claim) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (a) any investigation, litigation or other proceeding (whether or not any Agent, any Issuing Bank or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (b) the actual or alleged presence of Hazardous Materials relating in any way to any Real Property owned, leased or operated, at any time, by the Borrower or any of its Subsidiaries; the generation, storage, transportation, handling Release or threat of Release of Hazardous Materials by the Borrower or any of its Subsidiaries at any location, whether or not owned, leased or operated by the Borrower or any of its Subsidiaries; the non-compliance by the Borrower or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder); or any Environmental Claim relating in any way to the Borrower, any of its Subsidiaries or any Real Property at any time owned, leased or operated by the Borrower or any of its Subsidiaries, including, in each case, without limitation, the reasonable fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding, in all cases, whether or not caused by or arising, in

whole or in part, out of the comparative, contributory or sole negligence of the Indemnified Person (but excluding in each case (and each Indemnified Person, by accepting the benefits hereof, agrees to promptly refund or return any indemnity received hereunder to the extent it is later determined by a final, non-appealable judgment of a court of competent jurisdiction that such Indemnified Person is not entitled thereto) any losses, liabilities, claims, damages or expenses (i) to the extent incurred by reason of the gross negligence, bad faith or willful misconduct of the applicable Indemnified Person, any Affiliate or branch of such Indemnified Person or any of their respective directors, officers, employees, representatives, agents, Affiliates branches, trustees or investment advisors, (ii) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of the preceding clauses (i) and (ii), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) that do not involve or arise from an act or omission by any Credit Party or any of their respective affiliates and is brought by an Indemnified Person against another Indemnified Person (other than claims against any Agent solely in its capacity as such or in its fulfilling such role)). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, any Issuing Bank or any Lender or other Indemnified Person set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

(b) No Agent or any Indemnified Person shall be responsible or liable to any Credit Party or any other Person for (x) any determination made by it pursuant to this Agreement or any other Credit Document in the absence of gross negligence, bad faith or willful misconduct on the part of such Indemnified Person (in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment) or (y) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems.

(c) No party hereto (and no Indemnified Person or any Subsidiary or Affiliate of Holdings or the Borrower) shall be responsible to any other party hereto (or any Indemnified Person or any Subsidiary or Affiliate of Holdings or the Borrower) for any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Agreement or any other Credit Document or the financing contemplated hereby; *provided* that nothing in this Section 13.01(c) shall limit the Credit Parties' indemnity obligations to the extent that such indirect, special, punitive or consequential damages are included in any claim by a third party unaffiliated with any Indemnified Person with respect to which the applicable Indemnified Person is entitled to indemnification under Section 13.01(a).

Section 13.02 Right of Set-off. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, the Collateral Agent, each Issuing Bank, each Lender and each of their Affiliates and branches is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits, and other than any Excluded Collateral) and any other Indebtedness at any time held or owing by the Administrative Agent, the Collateral Agent, such Issuing Bank, such Lender or such Affiliate or branch (including, without limitation, by branches and agencies of the Administrative Agent, Collateral Agent or such Lender wherever located) to or for the credit or the account of the Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent, the Collateral Agent, such Issuing Bank, such Lender or such Affiliate or branch under this Agreement or under any of the other Credit Documents, including, without limitation, all claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent, the Collateral Agent, such Issuing Bank, such Lender or such Affiliate shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured. The right of setoff described in this Section 13.02 shall not apply with respect to any Excluded Collateral.

Section 13.03 Notices.

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, telecopier, cable communication or electronic transmission) and mailed, telegraphed, telexed, telecopied, cabled, delivered or transmitted: if to any Credit Party, c/o NESCO Holdings II, Inc., 7701 Independence Avenue, Kansas City, MO 64125, Attention: Chief Financial Officer; with a copy (which shall not constitute notice) to Latham & Watkins LLP, 555 11th Street NW, Suite 1000, Washington, DC 20004, Attention: Scott Forchheimer, Telecopier No.: (202) 637-2201; if to any Lender, at its address specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a

Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower); and if to the Administrative Agent, at the Notice Office; or, as to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall, when mailed or overnight courier, be effective when deposited in the mail, or overnight courier, as the case may be, or sent by facsimile or other electronic means of transmission, except that notices and communications to the Administrative Agent, Collateral Agent and the Borrower shall not be effective until received by the Administrative Agent, Collateral Agent or the Borrower, as the case may be.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent, the Collateral Agent, the Borrower or Holdings may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (b), of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (a) and (b) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(d) 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 any of the Administrative Agent, the Collateral Agent or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to Holdings, the Borrower, the Subsidiary Guarantors, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Credit Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet, in the absence of gross negligence, bad faith or willful misconduct of any Agent Party, as determined by a court of competent jurisdiction and by a final and nonappealable judgment.

Section 13.04 Benefit of Agreement; Assignments; Participations, etc.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate or branch of any Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), except as contemplated by Section 10.02(vi), and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate or branch of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in clause (c) of this Section 13.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more Eligible Transferees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; *provided* that, the Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate or branch of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing under Section 11.01 or 11.05, any other Eligible Transferee;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate or branch of a Lender or an Approved Fund;

(C) each applicable Issuing Bank (solely for the assignment that increases the obligations of the assignees to participate in exposure under one or more Letters of Credit (whether or not outstanding)); and

(D) the Swingline Lender; *provided* that no consent of the Swingline Lender shall be required for an assignment to a Lender, an Affiliate or branch of a Lender or an Approved Fund;

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate or branch of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loan, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing under Section 11.01 or 11.05;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; *provided* that this clause (B) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of Commitments or Revolving Loans of a single class;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with the payment by the assignee of a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Credit Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(iv) below, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.02, 5.01, and 13.01). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.04 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 clause (c) below.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and related interest amounts) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks 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 Lender, as to its own positions only, and any Issuing Bank, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) above and any written consent to such assignment required by clause (b) above, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; *provided* that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to this Agreement, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more Eligible Transferees (a "Participant"), in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including participations in Letters of Credit) owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrower, the Administrative Agent, the Issuing Banks 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 to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that requires the consent of each Lender or each adversely affected Lender and that directly affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 5.01 (subject to the requirements and limitations therein (it being understood that the documentation required under Section 5.01 shall be delivered solely to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 13.04; *provided* that such Participant (A) shall be subject to the provisions of Section 3.03 as if it were an assignee clause (b) of this Section 13.04; and (B) shall not be entitled to receive any greater payment under Section 3.01 or 5.01, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from any Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.04 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; *provided* that such Participant shall be subject to Section 3.03 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Credit Document) to any Person except to the extent such disclosure is necessary to establish that such Commitments, Loans, Letters of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans and Notes hereunder to a Federal Reserve Bank or any central banking authority in support of borrowings made by such Lender from such Federal Reserve Bank or any such central banking authority and, with prior notification to the Administrative Agent (but without the consent of the Administrative Agent or the Borrower), any Lender which is a fund may pledge all or any portion of its Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this clause (d) shall release the transferor Lender from any of its obligations hereunder.

(e) Each Lender acknowledges and agrees to comply with the provisions of Section 13.04 applicable to it as a Lender hereunder.

(f) If the Borrower wishes to replace the Revolving Loans or Commitments with the Revolving Loans or Commitments having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders of such Revolving Loans or holdings such Commitments, instead of prepaying the Revolving Loans or reducing or terminating the Commitments to be replaced, to (i) require such Lenders to assign such Revolving Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 13.12 (with such replacement, if applicable, being deemed to have been made pursuant to Section 13.12). Pursuant to any such assignment, all Revolving Loans and Commitments to be replaced shall be purchased at par (allocated among the applicable Lenders in the same manner as would be required if such Revolving Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 2.08. By receiving such purchase price, the applicable Lenders shall automatically be deemed to have assigned such Revolving Loans or Commitments pursuant to the terms of an Assignment and Assumption, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this clause (f) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(g) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent to provide to any requesting Lender, the list of Disqualified Lenders provided to the Administrative Agent by the Borrower (or its counsel) and any updates thereto. The Borrower hereby agree that any such requesting Lender may share the list of Disqualified Lenders with any potential assignee, transferee or participant. Notwithstanding the foregoing, each Credit Party and the Lenders acknowledge and agree that the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders (other than with respect to assignments or participations by it of its Loans and Commitments, if any). Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender (other than with respect to assignments or participations by it of its Loans and Commitments, if any).

Section 13.05 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

Section 13.06 [Reserved].

Section 13.07 Calculations; Computations.

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with U.S. GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto); *provided* that to the extent expressly provided herein, certain calculations shall be made on a Pro Forma Basis; *provided*, *further*, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any leverage calculation or any financial definition used therein to implement the effect of any change in U.S. GAAP or the application thereof occurring after the Closing Date on the operation thereof (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend any leverage test or any financial definition used therein for such purpose), then the Borrower and the Administrative Agent shall negotiate in good faith to amend such leverage test or the definitions used therein (subject to the approval of the Required Lenders) to preserve the original intent thereof in light of such changes in U.S. GAAP; *provided*, *further*, that all determinations made pursuant to any applicable leverage test or any financial definition used therein shall be determined on the basis of U.S. GAAP as applied and in effect immediately before the relevant change in U.S. GAAP or the application thereof became effective, until such leverage test or such financial definition is amended. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect) and (ii) the accounting for any lease shall be based on the Borrower's treatment thereof in accordance with U.S. GAAP as in effect on December 31, 2019 and without giving effect to any subsequent changes in U.S. GAAP (or the required implementation of any previously promulgated changes in U.S. GAAP) relating to the treatment of a lease as an operating lease or capitalized lease.

(b) The calculation of any financial ratios under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-down if there is no nearest number).

Section 13.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS (OTHER THAN WITH RESPECT TO ANY CREDIT DOCUMENT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE THEREIN) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK; *PROVIDED* THAT (A) THE INTERPRETATION OF THE DEFINITION OF "MATERIAL ADVERSE EFFECT" (AS DEFINED IN THE ACQUISITION AGREEMENT), AND WHETHER OR NOT SUCH "MATERIAL ADVERSE EFFECT" HAS OCCURRED, (B) THE DETERMINATION OF THE ACCURACY OF ANY OF THE ACQUISITION AGREEMENT REPRESENTATIONS, AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF THE CONDITIONS SET FORTH IN SECTION 6.14 WITH RESPECT TO SUCH REPRESENTATIONS HAVE NOT BEEN SATISFIED, AND (C) THE DETERMINATION OF WHETHER THE ACQUISITION HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE ACQUISITION AGREEMENT, IN EACH CASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY SECURITY DOCUMENT OR AS REGARDS ANY CANADIAN CREDIT PARTY, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE JURISDICTION IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS) MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, SUCH PARTY, AS THE CASE MAY BE, AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT THAT SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING

HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY OTHER SUCH PARTY IN ANY OTHER JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 13.09 Counterparts. This Agreement may be executed in counterparts and by the 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, the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as otherwise provided herein, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 13.10 [Reserved].

Section 13.11 Headings Descriptive. The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 13.12 Amendment or Waiver; etc.

(a) Except as expressly contemplated hereby, neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto or thereto, the Administrative Agent and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such additions) the Guaranty Agreement and the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), or the Administrative Agent with the written consent of the Required Lenders, *provided* that no such change, waiver, discharge or termination shall (i) without the prior written consent of each Lender (and Issuing Bank, if applicable) directly and adversely affected thereby, extend the final scheduled maturity of any Revolving Commitment, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with the waiver of the applicability of any post-default increase in interest rates) or reduce or forgive the principal amount thereof, (ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender, (iii) except as otherwise provided in the Credit Documents, release all or substantially all of the value of the Guaranties by the Guarantors without the prior written consent of each Lender, (iv) amend, modify or waive any *pro rata* sharing provision of Section 2.10, the payment waterfall provision of Section 11.11, or any provision of this Section 13.12(a) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Revolving Commitments on the Closing Date), in each case, without the prior written consent of each Lender directly and adversely affected thereby, (v) reduce the

percentage specified in the definition of "Required Lenders" or "Supermajority Lenders" without the prior written consent of each Lender (it being understood that, without the prior written consent of the Required Lenders or Supermajority Lenders, as applicable, additional extensions of credit pursuant to this Agreement that are permitted by the terms hereof or that have been consented to by the Required Lenders may be included in the determination of the Required Lenders or Supermajority Lenders, as applicable, on substantially the same basis as the extensions of Revolving Commitments are included on the Closing Date), (vi) [reserved] or (vii) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement without the consent of each Lender; *provided*, *further*, that no such change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Aggregate Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Article 12 or any other provision of any Credit Document as the same relates to the rights or obligations of such Agent, (3) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent, (4) without the consent of an Issuing Bank or the Swingline Lender, amend, modify or waive any provision relating to the rights or obligations of such Issuing Bank or Swingline Lender, or (5) without the prior written consent of the Supermajority Lenders, change the definition of the term "Borrowing Base" or any component definition used therein (including, without limitation, the definitions of "Eligible Accounts," "Eligible Cash," "Eligible Fleet Inventory," "Eligible Inventory," or "Eligible Parts Inventory") if, as a result thereof, the amounts available to be borrowed by the Borrower would be increased, or increase the percentages set forth therein or add any new classes of eligible assets thereto; *provided* that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to add Accounts and Inventory acquired in a Permitted Acquisition to the Borrowing Base as provided herein.

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (ii), inclusive, of the first proviso to Section 13.12(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 3.04 so long as at the time of such replacement, each such Replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such non-consenting Lender's Commitments and/or repay the outstanding Revolving Loans of such Lender in accordance with Section 3.04; *provided* that, unless the Commitments that are terminated, and Revolving Loans repaid, pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto; *provided*, *further*, that in any event the Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Revolving Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 13.12(a).

(c) Notwithstanding anything to the contrary contained in clause (a) of this Section 13.12, the Borrower, the Administrative Agent and each Lender providing the relevant Revolving Commitment Increase may (i) in accordance with the provisions of Section 2.15, enter into an Incremental Revolving Commitment Amendment, and (ii) in accordance with the provisions of Section 2.19, enter into an Extension Amendment; *provided* that after the execution and delivery by the Borrower, the Administrative Agent and each such Lender may thereafter only be modified in accordance with the requirements of clause (a) above of this Section 13.12.

(d) Without the consent of any other Person, the applicable Credit Party or Credit Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Credit Document) enter into any amendment or waiver of any Credit Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Creditors, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Creditors, in any property or so that the security interests therein comply with applicable Requirements of Law.

(e) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(f) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of "Supermajority Lenders" and "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); *provided* that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(g) Further, notwithstanding anything to the contrary contained in this Section 13.12, if following the Closing Date, the Administrative Agent and/or the Collateral Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and/or the Collateral Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 13.13 Survival. All indemnities set forth herein including, without limitation, in Sections 3.01, 3.02, 5.01, 12.07 and 13.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

Section 13.14 [Reserved].

Section 13.15 Confidentiality.

(a) Subject to the provisions of clause (b) of this Section 13.15, each Agent, each Lead Arranger and any Lender agrees that it will not disclose without the prior written consent, which may take the form of electronic mail, of the Borrower (other than to its affiliates and its and their respective directors, officers, employees, auditors, advisors or counsel or to another Lender if such Lender or such Lender's holding or parent company in its reasonable discretion determines that any such party should have access to such information in connection with the transactions contemplated by this Agreement and such Agent's, Lead Arranger's or Lender's role hereunder or investment in the Loans, *provided* such Persons shall be subject to the provisions of this Section 13.15 to the same extent as such Lender (or language substantially similar to this Section 13.15(a)) any non-public information with respect to the Borrower or any of its Subsidiaries (other than, for the avoidance of doubt, information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry) which is now or in the future furnished by or on behalf of any Credit Party pursuant to this Agreement or any other Credit Document; *provided* that each Agent, Lead Arranger and Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 13.15(a) by such Agent, Lead Arranger or Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal or supranational regulatory body or any foreign regulatory authorities and central banking authorities having or claiming to have jurisdiction over such Agent, Lead Arranger or Lender or to the Federal Reserve Board or other central banking authority or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Agent, Lead Arranger or Lender, (v) in the case of any Lead Arranger or Lender, to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty (other than any Disqualified Lender, except that the list of Disqualified Lenders may be furnished) in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 13.15 (or language substantially similar to this Section 13.15(a)), (vii) in the case of any Lender, to any prospective or actual transferee, pledgee or participant (other than any Disqualified Lender, to the extent that the list of Disqualified Lenders has been furnished, and any pledgee to whom disclosure is permitted pursuant to clause (ii) above) in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender, (viii) has become available to any Agent, Lead Arranger, any Lender, or any of their respective Affiliates or branches on a non-confidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of

the Borrower, (ix) for purposes of establishing a "due diligence" defense, (x) to credit risk protection providers (or insurers, re-insurers and insurance brokers) and (xi) that has been independently developed by such Agent, Lead Arranger or Lender without the use of any other confidential information provided by the Borrower or on the Borrower's behalf, *provided* that such prospective transferee, pledge or participant agrees to be bound by the confidentiality provisions contained in this Section 13.15 (or language substantially similar to this Section 13.15(a)); *provided*, *further*, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Agent, Lead Arranger or Lender, in the case of any disclosure pursuant to the foregoing clause (ii), (iii) or (iv), such Agent, Lead Arranger or Lender will use its commercially reasonable efforts to notify the Borrower in advance of such disclosure so as to afford the Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed.

(b) The Borrower hereby acknowledges and agrees that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to Holdings, the Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of Holdings, the Borrower and its Subsidiaries), *provided* such Persons shall be subject to the provisions of this Section 13.15 to the same extent as such Lender.

(c) If any Credit Party provides any Agent, any Lead Arranger or any Lender with personal data of any individual as required by, pursuant to, or in connection with the Credit Documents, that Credit Party represents and warrants to the Agents, the Lead Arrangers and Lenders that it has, to the extent required by law, (i) notified the relevant individual of the purposes for which data will be collected, processed, used or disclosed; and (ii) obtained such individual's consent for, and hereby consents on behalf of such individual to, the collection, processing, use and disclosure of his/her personal data by the Agents, Lead Arrangers and the Lenders, in each case, in accordance with or for the purposes of the Credit Documents, and confirms that it is authorized by such individual to provide such consent on his/her behalf.

Section 13.16 Patriot Act Notice. Each Lender hereby notifies Holdings and the Borrower that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the "Patriot Act"), the Beneficial Ownership Regulation and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" policies, regulations, laws or rules (, it is required to obtain, verify, and record information that identifies Holdings, the Borrower and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act and the Beneficial Ownership Regulation, and each Credit Party agrees to provide such information from time to time to any Lender.

Section 13.17 [Reserved].

Section 13.18 Waiver of Sovereign Immunity. Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that Holdings, the Borrower, or any of their respective Subsidiaries or any of their respective properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, to enforce or collect upon the Loans or any Credit Document or any other liability or obligation of Holdings, the Borrower, or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, Holdings and the Borrower, for themselves and on behalf of their respective Subsidiaries, hereby expressly waive, to the fullest extent permissible under applicable law, any such immunity, and agree not to assert any such right or claim in any such proceeding, whether in the United States or elsewhere. Without limiting the generality of the foregoing, Holdings and the Borrower further agree that the waivers set forth in this Section 13.19 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 13.19 INTERCREDITOR AGREEMENT.

(a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE INTERCREDITOR AGREEMENT, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE

PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.

(b) THE PROVISIONS OF THIS SECTION 13.19 ARE NOT INTENDED TO SUMMARIZE OR FULLY DESCRIBE THE PROVISIONS OF THE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT OR ANY OF ITS AFFILIATES OR BRANCHES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE INTERCREDITOR AGREEMENT. A COPY OF THE INTERCREDITOR AGREEMENT MAY BE OBTAINED FROM THE ADMINISTRATIVE AGENT.

(c) THE INTERCREDITOR AGREEMENT IS AN AGREEMENT SOLELY AMONGST THE LENDERS (AND THEIR SUCCESSORS AND ASSIGNS) AND IS NOT AN AGREEMENT TO WHICH HOLDINGS OR ANY OF ITS SUBSIDIARIES IS PARTY. AS MORE FULLY PROVIDED THEREIN, THE INTERCREDITOR AGREEMENT CAN ONLY BE AMENDED BY THE PARTIES THERETO IN ACCORDANCE WITH THE PROVISIONS THEREOF.

Section 13.20 Absence of Fiduciary Relationship. Notwithstanding any other provision of this Agreement or any provision of any other Credit Document, (i) none of the Lead Arrangers or any Lender shall, solely by reason of this Agreement or any other Credit Document, have any fiduciary, advisory or agency relationship or duty in respect of any Lender or any other Person and (ii) Holdings and the Borrower hereby waive, to the fullest extent permitted by law, any claims they may have against the Lead Arrangers or any Lender for breach of fiduciary duty or alleged breach of fiduciary duty by reason of this Agreement, any other Credit Document or the transactions contemplated herby or thereby and (iii) it is understood and agreed that the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of Holdings, the Borrower and their Affiliates and branches, and none of the Agents, the Lenders or their respective Affiliates or branches has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship.

Section 13.21 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due under this Agreement or any other Credit Document in any currency (the "Original Currency") into another currency (the "Other Currency"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by applicable law, on the day on which the judgment is paid or satisfied.

(b) The obligations of the Credit Parties in respect of any sum due in the Original Currency from them under any of the Credit Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Other Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Administrative Agent in the Original Currency, the Credit Parties agree, as a separate obligation and notwithstanding the judgment, to indemnify the Secured Parties (as defined in the U.S. Security Agreement and the Canadian Security Agreement), against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Administrative Agent in the Original Currency, the Administrative Agent shall remit such excess to the Borrower.

Section 13.22 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute," "signed," "signature," and words of like import in or related to this Agreement or any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Notice of Borrowings, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that notwithstanding anything contained herein to the contrary the

Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 13.23 Entire Agreement. This Agreement and the other Credit Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

Section 13.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 13.25 Acknowledgement Regarding Any Supported QFCs.

(a) To the extent that the Credit Documents provide support, through a guarantee or otherwise, for interest rate protection agreements or other hedging agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

* * *

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

CAPITOL INVESTMENT MERGER SUB 2, LLC,
as Holdings

By: /s/ Bradley Meader
Name: Bradley Meader
Title: Chief Financial Officer

NESCO HOLDINGS II, INC., as Borrower

By: /s/ Bradley Meader
Name: Bradley Meader
Title: Chief Financial Officer

BANK OF AMERICA, N.A., as Administrative Agent, Collateral Agent, a Lender and an Issuing Bank

By: /s/ Polly Hackett
Name: Polly Hackett
Title: SVP

PNC Bank, National Association,
as a Lender and Issuing Bank

By: /s/ Albert Sarkis
Name: Albert Sarkis
Title: Senior Vice President

Wells Fargo Bank, National Association
as a Lender and Issuing Bank

By: /s/ Kathryn Scharre Podelnyk
Name: Kathryn Scharre Podelnyk
Title: Director

Citibank, N.A.
as a Lender and Issuing Bank

By: /s/ Christopher Marino
Name: Christopher Marino
Title: Director and Vice President

Deutsche Bank AG New York Branch as a Lender and Issuing Bank

By: /s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

By: /s/ Yumi Okabe
Name: Yumi Okabe
Title: Vice President

Bank of Montreal,
as a Lender and Issuing Bank

By: /s/ Elizabeth Mitchell
Name: Elizabeth Mitchell
Title: Vice President

Fifth Third Bank, National Association,
as a Lender and Issuing Bank

By: /s/ Mark Pienkos
Name: Mark Pienkos
Title: Managing Director

MORGAN STANLEY SENIOR FUNDING, INC.,
as a Lender and Issuing Bank

By: /s/ Lisa Hanson
Name: Lisa Hanson
Title: VP

MUFG UNION BANK, N.A.
as a Lender and Issuing Bank

By: /s/ John Eissele
Name: John Eissele
Title: Managing Director

Royal Bank of Canada,
as a Lender and Issuing Bank

By: /s/ Pierre Noriega
Name: Pierre Noriega
Title: Authorized Signatory

CIBC Bank USA,
as a Lender and Issuing Bank

By: /s/ Zach Strube
Name: Zach Strube
Title: Managing Director

Stifel Bank and Trust,
as a Lender and Issuing Bank

By: /s/ John A. Phillips
Name: John A. Phillips
Title: E.V.P. – C.L.O.

Exhibit 10.4

Final Form

REGISTRATION RIGHTS AGREEMENT

BY AND BETWEEN

CUSTOM TRUCK ONE SOURCE, INC.

AND

THE INVESTORS PARTY HERETO

Dated as of April 1, 2020

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is entered into as of April 1, 2021, by and between Custom Truck One Source, Inc., a Delaware corporation (including its successors and permitted assigns, the "**Company**"), and each Investor party to this Agreement from time to time (each an "**Investor**", and collectively the "**Investors**"). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A.

WHEREAS, the Company is a party to a Subscription Agreement, dated December 21, 2020 (as amended, supplemented or otherwise modified from time to time, each a "**Subscription Agreement**"), pursuant to which the Company issued and sold to the Investors, and the Investors purchased from the Company, shares of Common Stock; and

WHEREAS, the Company has agreed to provide to the Investors resale registration and other rights set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
RESALE SHELF REGISTRATION

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall file within thirty (30) days following the Closing Date and shall use its reasonable best efforts to have declared effective as soon as practicable after the filing thereof , but no later than sixty (60) days following the Closing Date (the "**Effectiveness Deadline**"; provided that, if the Commission provides comments to the applicable registration statement, then the Effectiveness Deadline shall be ninety (90) days following the Closing Date), a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the "**Resale Shelf Registration Statement**" and such registration, the "**Resale Shelf Registration**"), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement.

Section 1.2 Effectiveness Period. Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "**Effectiveness Period**").

Section 1.3 Subsequent Shelf Registration. If any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its reasonable best efforts to promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall within thirty (30) days of such cessation of effectiveness, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or, file an additional registration statement (a "**Subsequent Shelf Registration**") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is thirty (30) days after such Subsequent Shelf Registration is filed and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a Registration Statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such Registration Statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration.

Section 1.5 Subsequent Holder Notice. If a Person becomes a Holder of Registrable Securities after a Shelf Registration becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a "**Subsequent Holder Notice**"):

(a) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law, provided, however, that the Company shall not be required to file more than one post-effective amendment or a supplement to the related prospectus for such purpose in any forty-five (45)-day period;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.5(a) to be filed; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Underwritten Offering. The Holders of a majority of the Registrable Securities may on up to two (2) occasions after the Resale Shelf Registration Statement becomes effective deliver a written notice to the Company specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through an underwritten offering, so long as the anticipated gross proceeds of such underwritten offering is not less than twenty-five million dollars ($25,000,000) (unless the Holders are proposing to sell all of the remaining Registerable Securities, in which case the anticipated gross proceeds of such underwritten offering shall not be less than twenty million ($20,000,000) (the "**Underwritten Offering**"). In the event of an Underwritten Offering:

(a) The Company and the Holders shall mutually select the managing underwriter or underwriters to administer the Underwritten Offering.

(b) Notwithstanding any other provision of this Section 1.6, if the managing underwriter or underwriters of a proposed Underwritten Offering advises the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number that can be sold in such Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.

Section 1.7 Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a "**Take-Down Notice**") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "**Shelf Offering**") and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

ARTICLE II
COMPANY REGISTRATION

Section 2.1 Notice of Registration. If at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its Common Stock, whether or not for its own account (other than a registration statement (i) on Form S-4 or Form S-8 or any successor

forms thereof or (ii) with respect to an at-the-market offering program, debt securities convertible into or exercisable or exchangeable for Common Stock, dividend reinvestment plan or securities issued under any employee stock option or other benefit plan), the Company will:

(a) promptly give to each Holder written notice thereof; and

(b) subject to Section 2.2, include in such registration or underwritten offering (and any related qualification under blue sky laws or other compliance) all the Registrable Securities specified in a written request or requests made within two (2) business days after receipt of such written notice from the Company by any Holder.

Section 2.2 Underwriting. The right of any Holder to registration pursuant to Section 1.6 or this Article II shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected for such underwriting by the Company or, in the case of a registration pursuant to Section 1.6, by the Company and such Holder (such underwriting agreement to be in the form negotiated by the Company and/or such Holder, as the case may be). Notwithstanding any other provision of this Article II, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number that can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, (i) in the event such offering was initiated by the Company, up to the total number of securities that the Company has requested to be included in such registration and (ii) in the event such offering was initiated by the holders of securities (other than the Holders) who have exercised their demand registration rights, up to the total number of securities that such holders of such securities have requested to be included in such offering, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that holders of securities with piggyback registration rights under the Stockholders' Agreement have requested to be included in such offering (in accordance with the terms of such Stockholders' Agreement), (c) third, and only if all the securities referred to in clause (b) have been included, up to the total number of securities that the Holders and other holders of securities that have contractual rights to be included in such registration have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (d) fourth, and only if all the securities referred to in clause (c) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.3 Right to Terminate Registration. The Company or the holders of securities who have caused a registration statement to be filed as contemplated by this Article II, as the case may be, shall have the right to have any registration initiated by it or them under this Article II terminated or withdrawn prior to the effectiveness thereof, whether or not any Holder has elected to include securities in such registration.

Section 2.4 Opting-Out Holder. By written notice delivered to the Company, any Holder (an "**Opting-Out Holder**") may elect to waive its rights under Sections 2.1 and 2.2 ("**Section 2 Opt-Out**"), until such time as the written notice is rescinded in writing. During such time as a Section 2 Opt-Out is in effect, (a) the Opting-Out Holder shall not receive notices of any proposed registration under Article II and (b) shall not be entitled to participate in any such offering pursuant to Article II.

ARTICLE III
ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

Section 3.1 Registration Procedures. In the case of each registration effected by the Company pursuant to Article I or II, the Company will keep each Holder participating in such Registration reasonably informed as to the status thereof and, at its expense, the Company will:

(a) prepare and file with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement;

(b) prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) furnish to the Holders participating in such registration and to their legal counsel copies of the registration statement proposed to be filed, and provide such Holders and their legal counsel the reasonable opportunity to review and comment on such registration statement;

(d) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as such underwriters may reasonably request in order to facilitate the public offering of such securities, provided that the availability of any such document on the U.S. Securities and Exchange Commission's EDGAR filing System (or successor thereto) shall satisfy the requirement to so furnish;

(e) use reasonable best efforts to notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the Company's knowledge of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.1(k), at the request of any such Holder, prepare promptly and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchaser of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, provided that the availability of any such document on the U.S. Securities and Exchange Commission's EDGAR filing System (or successor thereto) shall satisfy the requirement to so furnish;

(f) use reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(g) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into and perform its obligations under an underwriting agreement in accordance with the applicable provisions of this Agreement;

(h) in connection with an underwritten public offering, cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities covered by such offering (including participation in "road shows" or other similar marketing efforts);

(i) use reasonable best efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a customary "comfort" letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and

(j) use reasonable best efforts to list the Registrable Securities covered by such registration statement on the primary securities exchange on which the Common Stock is then listed; and

(k) notwithstanding any other provision of this Agreement, if the Company has determined in good faith, based upon the advice of legal counsel, that the disclosure necessary for continued use of the prospectus and registration statement by the Holders could be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company's records; provided, however, that in any 12-month period (x) the Company may exercise the right to such suspension not more than twice, and for more than sixty (60) consecutive calendar days for any single suspension, and (y) in no event shall the Company exercise the right to such suspension for more than ninety (90) days in the aggregate. From and after the date of a notice of suspension under this Section 3.1(k), each Holder agrees not to use the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted or (ii) the day following the sixtieth (60^{th}) day of suspension with respect to any single suspension or ninetieth (90^{th}) day within any 12-month period.

Section 3.2 Limitation on Subsequent Registration Rights. After the date hereof, the Company shall not enter into any agreement (excluding, for the avoidance of doubt, the Stockholders' Agreement) granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities that conflict with the rights granted to the Holders herein, without the prior written consent of Holders of a majority of the Registrable Securities. It is agreed that the granting of pro rata registration rights to any other investor in the Company shall not be considered to conflict with the rights granted to the Holders herein.

Section 3.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration pursuant to Article I or II shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration.

Section 3.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders and their controlled Affiliates, the Registrable Securities held by them and the distribution proposed by such Holder or Holders and their controlled Affiliates as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I or II are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will, and will cause their respective controlled Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement, and for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will and will cause their respective controlled Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective controlled Affiliates and such other information as may be required by applicable law to enable the Company to prepare such registration statement and the related prospectus covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders and their respective controlled Affiliates may be engaged in a distribution of the Registrable Securities, such Holder or Holders will, and they will cause their controlled Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their controlled Affiliates to, among other things: (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by it solely in the manner described in the applicable registration statement; and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders or their respective controlled Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree;

(c) such Holder or Holders shall, and they shall cause their respective controlled Affiliates to, supply the Company and its representatives and agents in a timely manner any information about such Holder or Holders as they may be reasonably request in connection with the offering or other distribution of Registrable Securities by such Holder or Holders; and

(d) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(k), or that requires the suspension by such Holder or Holders and their respective controlled Affiliates of the distribution of any of the Registrable Securities owned by such Holder or Holders, then such Holders shall, and they shall cause their respective controlled Affiliates to, cease offering or distributing the Registrable Securities owned by such Holder or Holders until the offering and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 3.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, for so long as a Holder owns Registrable Securities, the Company will use reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) so long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

Section 3.6 "Market Stand-Off" Agreement. Any Holder (excluding, for the avoidance of doubt, any Opting-Out Holder) that has elected to participate in a registration or underwritten offering pursuant to Article II (each, a "**Participating Holder**") shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities of the Company) held by such Participating Holder (other than those included in the registration) for a period specified by the representatives of the managing underwriter or underwriters of Common Stock (or other securities of the Company convertible into Common Stock) not to exceed five (5) days prior and ninety (90) days following any registered public sale of securities by the Company in which the Company gave such Participating Holder an opportunity to participate in accordance with Article II. Each Participating Holder shall also execute and deliver any "lock-up" agreement reasonably requested by the representatives of any underwriters of the Company consistent with this Section 3.6.

ARTICLE IV

INDEMNIFICATION

Section 4.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder's current and former officers, directors, partners and members, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "**Company Indemnified Parties**"), against all expenses, claims, losses, damages and liabilities, joint or several, (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Company Indemnified Parties for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company

(which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) that occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly, the Company, each of its directors, officers, partners and members, each underwriter, if any, of the Company's securities covered by such a registration, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other Holder and each of such Holder's officers, directors, partners and members and each Person controlling such Holder within the meaning of Section 15 of the Securities Act (collectively, the "**Holder Indemnified Parties**"), against all expenses, claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities law applicable to such Holder, and will reimburse each of the Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act

Section 4.3 Notification. Each party entitled to indemnification under this Article IV (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense at such party's expense; provided, further, however, that an Indemnified Party (together with all other Indemnified Parties) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Article IV, only to the extent that, the failure to give such notice is materially prejudicial or harmful to an Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such

Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have.

Section 4.4 Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions that resulted in such claims, loss, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were based solely upon the number of entities from whom contribution was requested or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4.4. In no event shall any Holder's contribution obligation under this Section 4.4 exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE V
TERMINATION OF REGISTRATION RIGHTS

Section 5.1 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register securities under Articles I and II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

ARTICLE VI
MISCELLANEOUS.

Section 6.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts transmitted by telecopy, telefax or other electronic transmission service shall be considered original executed counterparts for purposes of this Section 6.1, provided that receipt of copies of such counterparts is confirmed.

Section 6.2 Governing Law; Waiver of Jury Trial; Remedies.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the state of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Delaware.

(b) Any dispute relating hereto shall be heard first in the Delaware Court of Chancery, and, if applicable, in any state or federal court located in of Delaware in which appeal from the Court of Chancery may validly be taken under the laws of the State of Delaware (each a "Chosen Court" and collectively, the "**Chosen Courts**"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "**Applicable Matters**") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the state of Delaware, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of

the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 6.5 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(f) Each party hereto agrees that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to specific enforcement of the terms and provisions of this Agreement, in addition to any other remedy to which it is entitled at law or in equity. In the event that any proceeding shall be brought in equity to enforce the provisions of this Agreement, the defending party shall not allege, and such party hereby waives the defense, that there is an adequate remedy at law, and such party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

Section 6.3 Entire Agreement; No Third Party Beneficiary. This Agreement and the applicable Subscription Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. Except as provided in Article IV, this Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.4 Expenses. Except as provided in Section 3.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses.

Section 6.5 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by nationally recognized overnight air courier, one (1) business day after mailing; (b) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in Section 6.5(a), when transmitted and receipt is confirmed; and (c) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other Parties to this Agreement:

If to the Company, to:

Custom Truck One Source, Inc.
6714 Pointe Inverness Way
Suite 220
Fort Wayne, IN
Attn: Josh Boone
Email: josh.boone@nescorentals.com

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

Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
Attention: Paul Sheridan
Email: paul.sheridan@lw.con

If to an Investor, to its address set forth in the signature pages hereto.

Section 6.6 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

Section 6.7 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.8 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Company and the Holders of a majority of the Registrable Securities outstanding at the time of such amendment. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. Notwithstanding the foregoing, this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Holder without the written consent of such Holder, if such amendment, modification, termination or waiver would adversely affect the rights of such Holder in a manner disproportionate to any adverse effect such amendment, modification, termination or waiver would have on the rights of the other Holders under this Agreement. The Company shall give prompt written notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination or waiver. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.9 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and paragraph references are to the Sections and paragraphs in this Agreement unless otherwise specified; (iii) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified; and (iv) the word “or” shall not be exclusive.

(b) With regard to each and every term and condition of this Agreement, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement.

Section 6.10 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

(*The next pages are the signature pages*)

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

CUSTOM TRUCK ONE SOURCE, INC.

By: /s/ Joshua Boone
Name: Joshua Boone
Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

ALYESKA MASTER FUND, L.P.

By: /s/ Jason A. Bragg
Name: Jason A. Bragg
Title: CFO

[Signature Page to Registration Rights Agreement]

FEDERATED GLOBAL INVESTMENT MANAGEMENT CORP., as attorney-in-fact for

Federated Hermes Kaufmann Small Cap Fund, a portfolio of Federated Hermes Equity Funds

By: /s/ Stephen Van Meter
Name: Stephen Van Meter
Title: Vice President and Chief Compliance Officer

[Signature Page to Registration Rights Agreement]

HAWKEYE CAPITAL MASTER

By: Hawkeye Capital Management, LLC
Its: Investment Advisor

By: /s/ Richard Rubin

Name: Richard Rubin
Title: Managing Member

[Signature Page to Registration Rights Agreement]

WELLS FARGO SPECIAL SMALL CAP VALUE FUND, a series of Wells Fargo Funds Trust

By: Wells Capital Management Incorporated
Its: Sub-Adviser

By: /s/ Jon Baranko
Name: Jon Baranko
Title: Chief Investment Officer, Global Fundamental Investments

[Signature Page to Registration Rights Agreement]

SHOTFUT MENAYOT HUL – AMITIM, PHOENIX INSURANCE COMPANY, LTD.

By: /s/ Haggai Schreiber
Name: Haggai Schreiber
Title: Deputy CEO, CIO

By: /s/ Gilad Shamir
Name: Gilad Shamir
Title: CIO Amitim

[Signature Page to Registration Rights Agreement]

PHOENIX INSURANCE COMPANY, LTD.

By: /s/ Haggai Schreiber
Name: Haggai Schreiber
Title: Deputy CEO, CIO

By: /s/ Dan Kerner
Name: Dan Kerner
Title: Head of Nostro Investments

[Signature Page to Registration Rights Agreement]

CLEARBRIDGE SMALL CAP FUND

By: ClearBridge Investments, LLC
Its: Discretionary Manager

By: /s/ Barbara Brooke Manning
Name: Barbara Brooke Manning
Title: Managing Director

[Signature Page to Registration Rights Agreement]

CLEARBRIDGE SMALL CAP CORE VIP FUND

By: ClearBridge Investments, LLC
Its: Discretionary Manager

By: /s/ Barbara Brooke Manning
Name: Barbara Brooke Manning
Title: Managing Director

[Signature Page to Registration Rights Agreement]

CLEARBRIDGE SMALL CAP VALUE FUND

By: ClearBridge Investments, LLC
Its: Discretionary Manager

By: /s/ Barbara Brooke Manning
Name: Barbara Brooke Manning
Title: Managing Director

[Signature Page to Registration Rights Agreement]

CLEARBRIDGE SMALL CAP CIF

By: ClearBridge Investments, LLC
Its: Discretionary Manager

By: /s/ Barbara Brooke Manning
Name: Barbara Brooke Manning
Title: Managing Director

[Signature Page to Registration Rights Agreement]

CITADEL MULTI-STRATEGY EQUITIES MASTER FUND LTD.

By: Citadel Advisors LLC
Its: Portfolio Manager

By: /s/ Christopher L. Ramsay
Name: Christopher L. Ramsay
Title: Authorized Signatory

[Signature Page to Registration Rights Agreement]

MMF LT, LLC

By: /s/ Kerrill O'Mahony
Name: Kerrill O'Mahony
Title: Global Head of Operations

[Signature Page to Registration Rights Agreement]

BRANDMEYER HOLDINGS-NESCO, LLC

By: /s/ John G. Brandmeyer
Name: John G. Brandmeyer
Title: Manager

[Signature Page to Registration Rights Agreement]

GHISALLO MASTER FUND LP

By: /s/ Michael Germino
Name: Michael Germino
Title: Authorized Signatory

[Signature Page to Registration Rights Agreement]

PUTNAM SMALL CAP VALUE FUND

By: Putnam Investment Management, LLC
Its: Investment Adviser

By: /s/ Marc Lindquist
Name: Marc Lindquist
Title: Head of Equity Trading

[Signature Page to Registration Rights Agreement]

PUTNAM VT SMALL CAP VALUE FUND

By: Putnam Investment Management, LLC
Its: Investment Adviser

By: /s/ Marc Lindquist
Name: Marc Lindquist
Title: Head of Equity Trading

[Signature Page to Registration Rights Agreement]

PALMER SQUARE CAPITAL BDC, INC.

By: /s/ Dan Fowler
Name: Dan Fowler
Title: Vice President

[Signature Page to Registration Rights Agreement]

PALMER SQUARE OPPORTUNISTIC CREDIT FUND LP

By: /s/ Dan Fowler
Name: Dan Fowler
Title: Vice President

[Signature Page to Registration Rights Agreement]

RONALD J. LEONHARDT, JR.

By: /s/ Ronald J. Leonhardt, Jr.

[Signature Page to Registration Rights Agreement]

RADCLIFF PRINCIPAL HOLDINGS LLC

By: /s/ Evan Morgan
Name: Evan Morgan
Title: Manager

[Signature Page to Registration Rights Agreement]

RVMA INVESTMENTS LLC

By: /s/ Madhur Agarwal
Name: Madhur Agarwal
Title: Member

[Signature Page to Registration Rights Agreement]

DANIEL JEMAL

By: /s/ Daniel Jemal

[Signature Page to Registration Rights Agreement]

THE SPITFIRE FUND LP

By: Spitfire Fund GP LLC
Its: General Partner

By: /s/ Julian A.L. Allen
Name: Julian A.L. Allen
Title: Managing Member

[Signature Page to Registration Rights Agreement]

SPITFIRE FUND GP LLC

By: /s/ Julian A.L. Allen
Name: Julian A.L. Allen
Title: Managing Member

[Signature Page to Registration Rights Agreement]

EVAN MORGAN

By: /s/ Evan Morgan

[Signature Page to Registration Rights Agreement]

Mark Ein

By: /s/ Mark Ein

[Signature Page to Registration Rights Agreement]

JAMES M. ROSS REVOCABLE TRUST

DATED JULY 20, 2015

By: /s/ James M. Ross
Name: James M. Ross
Title: Trustee

[Signature Page to Registration Rights Agreement]

VINCENT ROSS REVOCABLE TRUST

By: /s/ Vincent Ross
Name: Vincent Ross
Title: Trustee

[Signature Page to Registration Rights Agreement]

CHRISTOPHER D. ROSS HOLDING COMPANY, LLC

By: /s/ Christopher D. Ross
Name: Christopher D. Ross
Title: Manager

[Signature Page to Registration Rights Agreement]

Ryan McMonagle

By: /s/ Ryan McMonagle

[Signature Page to Registration Rights Agreement]

Marshall Heinberg

By: /s/ Marshall Heinberg

[Signature Page to Registration Rights Agreement]

FLR HOLDING COMPANY LLC

By: /s/ Francis A. Ross
Name: Francis A. Ross
Title: Manager

[Signature Page to Registration Rights Agreement]

Ben Link

By: /s/ Ben Link

[Signature Page to Registration Rights Agreement]

CHRISTOPHER MARTIN ROSS HOLDING COMPANY LLC

By: /s/ Christopher M. Ross
Name: Christopher M. Ross
Title: Manager

[Signature Page to Registration Rights Agreement]

Joshua Boone

By: /s/ Joshua Boone

[Signature Page to Registration Rights Agreement]

Leslie Wells

By: /s/ Leslie Wells

[Signature Page to Registration Rights Agreement]

Adam Haubenreich

By: /s/ Adam Haubenreich

[Signature Page to Registration Rights Agreement]

Andrew P. Zaborny

By: /s/ Andrew P. Zaborny

[Signature Page to Registration Rights Agreement]

Brad Meader

By: /s/ Brad Meader

[Signature Page to Registration Rights Agreement]

Georgia Nelson

By: /s/ Georgia Nelson

[Signature Page to Registration Rights Agreement]

Paul T. Bader

By: /s/ Paul T. Bader

[Signature Page to Registration Rights Agreement]

Jim Carlsen

By: /s/ Jim Carlsen

[Signature Page to Registration Rights Agreement]

Michael D. Young

By: /s/ Michael D. Young

[Signature Page to Registration Rights Agreement]

EXHIBIT A
DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

"**Affiliate**" of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person.

"**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined under Rule 405.

"**Board**" means the board of directors of the Company.

"**Closing Date**" has the meaning set forth in the Subscription Agreements.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the Company's common stock, par value $ 0.0001 per share.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Holder**" means any Investor holding Registrable Securities.

"**Person**" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, other legal entity, or any government or governmental agency or authority.

"**register**", "**registered**" and "**registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

"**Registration Expenses**" means (a) all expenses incurred by the Company in complying with Articles I and II, including, without limitation, all registration, qualification, listing and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any special audits incident to or required by any such registration; and (b) the fees and expenses of any counsel to the Holders; provided, however, that, in the case of this clause (b), such fees and expenses shall not exceed $25,000 in the aggregate for all Holders with respect to any particular registration pursuant to Article I or II.

"**Registrable Securities**" means (a) the shares of Common Stock issued to an Investor pursuant to the applicable Subscription Agreement and (b) any Common Stock or other securities actually issued in respect of the securities described in clause (a) above or this clause (b) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a) and (b) above shall cease to be Registrable Securities on the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective registration statement relating thereto; (ii) the date on which such security has been sold pursuant to Rule 144 and the security is no longer a Restricted Security; or (iii) the date on which all Registrable Securities owned by the Holder thereof may be resold without volume or other restrictions during any and all three-month periods pursuant to Rule 144, including with respect to current public information requirements.

"**Restricted Securities**" means any Common Stock required to bear the legend set forth in Section 8 of the applicable Subscription Agreement.

"**Rule 144**" means Rule 144 promulgated under the Securities Act and any successor provision.

"**Rule 405**" means Rule 405 promulgated under the Securities Act and any successor provision.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"**Selling Expenses**" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders.

"**Shelf Registration**" means the Resale Shelf Registration or a Subsequent Shelf Registration, as applicable.

"**Stockholders' Agreement**" means the Amended and Restated Stockholders' Agreement, dated as of the date hereof, among the Company and the Persons party thereto, as the same may be amended, modified or supplemented from time to time.

"**WKSI**" means a "well known seasoned issuer" as defined under Rule 405.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

Term	Section
Agreement	Preamble
Applicable Matters	Section 6.2(b)
Chosen Court	Section 6.2(b)
Company	Preamble
Company Indemnified Parties	Section 4.1
Effectiveness Deadline	Section 1.1
Effectiveness Period	Section 1.2
Holder Indemnified Parties	Section 4.2
Indemnified Party	Section 4.3
Indemnifying Party	Section 4.3
Opting-Out Holder	Section 2.4
Participating Holder	Section 3.6
Resale Shelf Registration	Section 1.1
Resale Shelf Registration Statement	Section 1.1
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Subscription Agreement	Recitals
Subsequent Holder Notice	Section 1.5
Subsequent Shelf Registration	Section 1.3
Take-Down Notice	Section 1.7
Underwritten Offering	Section 1.6

Exhibit 10.5

AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT

of

CUSTOM TRUCK ONE SOURCE, INC.

Dated as of April 1, 2021

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT

This AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT (this "Agreement"), dated as of April 1, 2021 (the "Effective Time"), is entered into by and among (i) Custom Truck One Source, Inc., a Delaware corporation f/k/a Nesco Holdings, Inc. (the "Company"); (ii) NESCO Holdings, LP, a Delaware limited partnership (the "NESCO Holder"); (iii) Energy Capital Partners III, LP, a Delaware limited partnership, Energy Capital Partners III-A, LP, a Delaware limited partnership, Energy Capital Partners III-B, LP, a Delaware limited partnership, Energy Capital Partners III-C, LP, a Delaware limited partnership, Energy Capital Partners III-D, LP, a Delaware limited partnership, and Energy Capital Partners III (NESCO Co-Invest), LP, a Delaware limited partnership (collectively, together with the NESCO Holder, "ECP"); (iv) Capitol Acquisition Management IV LLC, a Delaware limited liability company, Capitol Acquisition Founder IV LLC, a Delaware limited liability company, and the other Persons included on the signature pages hereto as "Sponsors" (collectively, the "Sponsors"); (v) PE One Source Holdings, LLC, a Delaware limited liability company ("Platinum"); (vi) BCP CTOS Holdings L.P., a Delaware limited partnership, BEP CTOS Holdings L.P., a Delaware limited partnership, Blackstone Energy

Partners NQ L.P., a Delaware limited partnership, Blackstone Energy Management Associates NQ L.L.C., a Delaware limited liability company, Blackstone Energy Family Investment Partnership SMD L.P., a Delaware limited partnership, Blackstone Energy Family Investment Partnership NQ ESC L.P., a Delaware limited partnership, Blackstone Capital Partners VI-NQ L.P., a Delaware limited partnership, Blackstone Management Associates VI-NQ L.L.C., a Delaware limited liability company, and Blackstone Family Investment Partnership VI-NQ ESC L.P., a Delaware limited partnership (collectively, "Blackstone"); and (vii) the stockholders whose names are set forth on Schedule 1 (each a "Management Holder" and collectively the "Management Holders"). Each of the Company, the NESCO Holder, ECP, the Sponsors, Platinum, Blackstone and the Management Holders may be referred to herein as a "Party" and collectively as the "Parties". Except as otherwise indicated, capitalized terms used but not defined herein shall have the meanings set forth in Section 5.16.

RECITALS

WHEREAS, in connection with the closing of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of April 7, 2019, among the Company, the NESCO Holder and the other parties thereto (as amended or modified, the "Merger Agreement"), the NESCO Holder, ECP, the Sponsors and certain other parties entered into (x) that certain Stockholders' Agreement with respect to the Company, dated July 31, 2019 and (y) that certain Registration Rights Agreement, dated July 31, 2019 (the "Prior Agreements");

WHEREAS, as of the date hereof, Platinum has purchased common stock of the Company, par value $0.0001 per share (the "Common Stock"), to facilitate the acquisition by the Company of Custom Truck One Source, L.P. ("CTOS"), an entity controlled by affiliates of Blackstone and by the Management Holders, which acquisition closed on the date hereof and as part of which Blackstone and the Management Holders have agreed to exchange certain of their Equity Interests in CTOS for Common Stock; and

WHEREAS, in connection with the transactions described in the foregoing WHEREAS clause, the parties to the Prior Agreements desire to amend and restate the Prior Agreements by entering into this Agreement, and the other Parties desire to enter into this Agreement, in each case, to govern certain of their rights, duties and obligations with respect to their ownership of Common Stock and the other matters set forth herein.

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

ARTICLE I
CORPORATE GOVERNANCE

Section 1.1 Board of Directors Composition.

(a) The Company shall take all necessary and desirable actions such that (i) the size of the Board shall be set at eleven (11) members, each of whom shall have one Vote, provided that such number and Vote are subject to Section 1.1(b)(i) and Section 1.1(b)(ii), and (ii) the following Persons shall form the composition of the Board: (A) David Glatt, Paul Bader, Rahman D'Argenio and Mark Ein shall be appointed as Class A Directors with terms ending at the Company's 2023 Annual Meeting; (B) Marshall Heinberg, Louis Samson and David Wolf shall be appointed as Class B Directors with terms ending at the Company's 2021 Annual Meeting; and (C) Bryan Kelln, Georgia Nelson, John-Paul (JP) Munfa and Fred Ross shall be appointed as Class C Directors with terms ending at the Company's 2022 Annual Meeting.

(b) The following Parties shall have the right to nominate the following Directors (each, a "Nominee"):

(i) For so long as Platinum (together with its Affiliates) meets the Platinum Director Nomination Threshold, Platinum shall have the option and right (but not the obligation) to designate, in the aggregate (and less the number of Platinum Directors who are not up for election) (y) four (4) Directors, each of whom shall be nominated by the Company and have two (2) Votes; plus (z) three (3) Directors who shall be nominated by the Company and the minimum number of whom shall qualify as "independent" solely to the extent necessary to comply with the listing standards of the Approved Stock Exchange. For so long as Platinum (together with its Affiliates) meets the Platinum Ownership Threshold but not the Platinum Director Nomination Threshold, Platinum shall have the option and right (but not the obligation) to designate any number of Directors described in the immediately preceding sentence, having one (1) or two (2) Votes each, so long as the total number

of Votes of all such designees does not exceed the difference of the total number of Votes constituting a majority of all Votes of all Directors minus one (1). For so long as Platinum does not meet the Platinum Ownership Threshold but (together with its Affiliates) Beneficially Owns a number of shares of Common Stock (i) equal to or greater than four and one half percent (4.5%) of the total number of shares of Common Stock issued and outstanding (on a Non-Fully Diluted Basis), Platinum shall have the option and right (but not the obligation) to designate one (1) Director (less the number of Platinum Directors who are not up for election) who shall be nominated by the Company, and (ii)(A) equal to or greater than 15% of the total number of shares of Common Stock issued and outstanding and (B) greater than the number of shares of Common Stock owned by any other Person or group of Affiliated Persons (in each of cases (A) and (B) of this sentence, on a Non-Fully Diluted Basis), Platinum shall have the right to designate the Chairperson from among the Directors.

(ii) For so long as Platinum (together with its Affiliates) meets the Platinum Ownership Threshold, in addition to the Directors it designated and the Company nominated pursuant to the first sentence of Section 1.1(b)(i), Platinum shall have the right to designate up to two (2) additional Directors, each of whom shall be nominated by the Company. If Platinum designates one (1) or two (2) additional Directors pursuant to the provisions of this Section 1.1(b)(ii), (i) each Director designated and nominated pursuant to this Section 1.1(b)(ii) and Section 1.1(b)(i)(y) shall have a number of Votes that is equal to a fraction the denominator of which is the actual number of Directors serving on the Board at the time such Vote is cast that were nominated pursuant to this Section 1.1(b)(ii) and Section 1.1(b)(i)(y) and the numerator of which is eight (8) and (ii) the Company shall take all necessary and desirable actions such that the size of the Board shall be expanded solely to accommodate the Directors designated and nominated pursuant to this Section 1.1(b)(ii) and to appoint such Director to a directorship class of Platinum's choice.

(iii) Notwithstanding anything to the contrary contained in this Agreement, if and so long as Platinum (together with its Affiliates) meets the Platinum Director Nomination Threshold and subject to, in addition to and without limiting any and all nomination rights of Platinum and appearance, voting and consent commitments contained in this Agreement, including without limitation as set forth in Section 1.1(d), nothing in this Agreement or the Bylaws shall be deemed to limit (A) the right of Platinum to nominate additional Directors for election to the Board through any and all means not in violation of the Bylaws and to solicit stockholders outside of the Company's proxy statement applicable to such election, nor (B) the right or ability of the Company to include such additional nominees as the Company's nominees in its proxy statement applicable to such election and otherwise solicit stockholders to vote in favor of such additional nominees of Platinum, including taking all actions in support thereof; provided however that Platinum shall not nominate any such additional Director pursuant to clause (A) above where such nomination or Platinum's solicitation in connection therewith would be intended or solicited to fill any position on the Board that is reserved for a nomination pursuant to Section 1.1(b)(iv) through (vi) hereof.

(iv) For so long as Blackstone (together with its Affiliates) Beneficially Owns a number of shares of Common Stock equal to or greater than four and one half percent (4.5%) of the total number of shares of Common Stock issued and outstanding (on a Non-Fully Diluted Basis), Blackstone shall have the right to nominate one (1) Director (if the Blackstone Director is up for election).

(v) For so long as ECP (together with their respective Affiliates) Beneficially Own, in the aggregate, a number of shares of Common Stock equal to or greater than four and one half percent (4.5%) of the total number of shares of Common Stock issued and outstanding (on a Non-Fully Diluted Basis, ECP shall have the right to nominate one (1) Director (if the ECP Director is up for election).

(vi) For so long as Capitol (together with its Affiliates) Beneficially Owns a number of shares of Common Stock equal to 50% or more of the shares of Common Stock owned by Capitol and its Affiliates as of the Effective Time (which number of shares of Common Stock shall include, for the avoidance of doubt, any shares of Common Stock acquired on the date of this Agreement), Capitol shall have the right (A) to nominate either Mark Ein or Dyson Dryden as a Director (if the Capitol Director is up for election) and (B) to have Dyson Dryden (if Capitol nominated Mark Ein as a Director pursuant to clause (A) of this sentence) or Mark Ein (if Capitol nominated Dyson Dryden as a Director pursuant to clause (A) of this sentence) as a non-voting observer to the Board and the Company shall furnish to such observer at the same time provided to the Directors

(x) notices of all Board meetings, (y) copies of the materials with respect to all meetings of the Board (or any committees thereof) or otherwise provided to the Directors, and (z) copies of any action by written consent by the Board and copies of such consent promptly after it shall have been signed by the Directors; provided, however, that the Company may redact from the information furnished under clauses (x) through (z) of this sentence any information the Company is prohibited from providing under applicable Law or that the Company reasonably determines may not be provided to protect attorney-client privilege.

In addition, the Parties agree that the Company's Chief Executive Officer shall be nominated as a Director. The Parties agree and acknowledge that the percentages referenced above are measures that are used solely for purposes of this Agreement and are not intended to establish or be equal to any ownership percentage calculated and reported under Regulation 13D-G promulgated by the SEC or under any other provision of federal or state securities Laws.

(c) The Company shall (i) include each of the Nominees up for election in its proxy statement and proxy card as director nominees of the Board, not include any nominee in replacement of a Nominee without the prior written consent of the Stockholder that designated such Nominee, which consent may be withheld for any reason, (ii) recommend the election of the Nominees up for election to the stockholders of the Company and (iii) solicit proxies in favor of the election of the Nominees up for election (the foregoing clauses (i) through (iii), the "Election Support Efforts"); provided, however, if any Election Support Efforts are not permitted by the applicable rules and regulations of the Approved Stock Exchange or applicable Law, then the Company shall comply with its obligation under this Agreement to the fullest extent so permitted by the applicable rules and regulations of the Approved Stock Exchange or applicable Law; and provided, further, that nothing in this Agreement or the Company's Bylaws shall be deemed to limit the right or ability of the Company to nominate as the Company's nominees (rather than as Platinum's Nominees) any Platinum Nominees.

(d) Each Stockholder shall, or shall cause its representatives to, appear in person or by proxy at each annual or special meeting of stockholders of the Company at which Directors are to be elected and vote, or act by written consent with respect to, all Voting Securities beneficially owned by it, to cause the Nominees of the other Stockholders to be elected to the Board, whether such Nominees have been nominated by the Board pursuant to Section 1.1(b) or by the relevant Stockholder in accordance with the Bylaws. No Stockholder shall take any action that would reasonably be likely to prevent the election of another Stockholder's Nominee. Upon the written request of a Stockholder, each other Stockholder shall vote, or act by written consent with respect to, all Voting Securities beneficially owned by it, and otherwise take or cause to be taken all actions within its control necessary, to remove any Director designated by such requesting Stockholder and to elect any replacement Director designated as provided in this Section 1.1. Except as set forth in the immediately preceding sentence, neither the Company nor any Stockholder shall take any action to cause the removal of any Directors designated by another Stockholder in accordance with this Section 1.1.

(e) In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal (with or without cause) of any Director nominated pursuant to this Section 1.1, the remaining Directors and the Company shall, to the extent the applicable Stockholder is entitled to nominate a Director for such position pursuant to Section 1.1(b), to the fullest extent permitted by applicable Law, cause the vacancy created thereby to be filled by a new nominee of the Stockholder that designated such Director as soon as possible, and the Company and the Stockholders hereby agree to take, to the fullest extent permitted by applicable Law, at any time and from time to time, all actions necessary to accomplish the same, it being understood that any such successor designee shall serve the remainder of the term of the Director whom such designee replaces.

(f) If a Nominee is not elected because of such Nominee's death, disability, retirement, withdrawal as a nominee or for any other reason, the Stockholder that nominated such Nominee in accordance with this this Section 1.1 shall, to the extent the applicable Stockholder is entitled to nominate a Director for such position pursuant to Section 1.1(b), be entitled to designate promptly another Nominee and each other Stockholder and the Company shall take all necessary and desirable actions within its control such that the Director position for which such Nominee was nominated shall not be filled pending such designation or the size of the Board shall be increased by one (1) and such vacancy shall be filled with such successor Nominee within ten (10) days of such designation. Notwithstanding anything to the contrary, the Director position for which such Nominee was nominated shall not be filled pending such designation and appointment, unless the Stockholder that nominated such Nominee in accordance with this Section 1.1 fails to designate such Nominee for more than 30 days, after which the Company may appoint an interim successor nominee who may serve as a Director if duly elected or appointed until the Stockholder that nominated such Nominee in accordance with this Section 1.1 makes such designation. No Stockholder shall be obligated to designate all (or any) of the Directors it is entitled to designate pursuant to this Agreement but the failure to do so shall not constitute a waiver of its rights hereunder.

(g) In the event that Platinum has nominated less than the total number of Nominees that Platinum would be entitled to nominate pursuant to this Section 1.1, or in the event that Platinum decides to nominate one (1) or two (2) additional Nominees in accordance with Section 1.1(b)(ii), then Platinum shall have the right, at any time, to nominate such additional Nominee(s) to which it would be entitled, in which case the Company, the Directors and the other Stockholders shall take all necessary corporate action within their respective control, to the fullest extent permitted by applicable Law and the rules and regulations of the Approved Stock Exchange, to (x) enable Platinum to nominate and effect the election or appointment of such additional individuals, whether by increasing the size of the Board or otherwise, and (y) designate such additional individuals nominated by Platinum to fill such newly created vacancies or to fill any other existing vacancies.

(h) In the event that a Stockholder shall cease to have the right to designate a Director pursuant to this Section 1.1, the Nominee of such Stockholder shall (i) at the request of a majority of the Directors then in office or the Chairperson, resign immediately or such Stockholder shall take all action necessary to remove such Nominee or (ii) if no such request is made, continue to serve until his or her term expires at the next annual meeting of stockholders of the Company. In the event such Nominee resigns or is removed at the request of a majority of the Directors then in office or the Chairperson, the Directors remaining in office shall be entitled to decrease the size of the Board to eliminate such vacancy and no consent under Section 1.7 shall be required in connection with such decrease. The Company shall, and the Stockholders agree to take all action necessary to, remove from the Board any Director that has not been nominated by a Stockholder pursuant to the provisions of this Section 1.1.

(i) The rights of the Stockholders pursuant to this Section 1.1 are personal to the Stockholders and shall not be exercised by any Transferee other than a Permitted Transferee.

(j) Director Expenses; Insurance.

(i) The Company shall pay the reasonable, documented out-of-pocket expenses incurred by each Director in connection with his or her services provided to or on behalf of the Company, including attending meetings (including committee meetings) or events attended on behalf of the Company at the Company's request.

(ii) The Company shall (A) purchase directors' and officers' liability insurance in an amount and pursuant to terms determined by the Board to be reasonable and customary and (B) for so long as a Director nominated pursuant to the terms of this Agreement serves as a Director, maintain such coverage with respect to such Director; provided, however, that upon removal or resignation of such Director for any reason, the Company shall take all actions reasonably necessary to extend such directors' and officers' liability insurance coverage for a period of not less than six (6) years from any such event in respect of any act or omission occurring at or prior to such event.

Section 1.2 Committees; Subsidiary Boards.

(a) Immediately following the execution of this Agreement, the Board shall disband the Nominating Committee, if any, so that at the Effective Time the only committees of the Board shall be the Audit Committee and the Compensation Committee.

(b) Subject to Section 1.2(c) and Section 1.2(d), each of Platinum, Blackstone and Capitol, while it has the right to designate at least one (1) Director to the Board and so designated a Director, shall have the right, but not the obligation, to designate such Director as a member to either the Compensation Committee or the Audit Committee and ECP, while it has the right to designate at least one (1) Director to the Board and so designated a Director, shall have the right, but not the obligation, to designate such Director as a member to the Compensation Committee; provided, however, that Platinum, while it meets the Platinum Ownership Threshold, shall in addition have the right, but not the obligation, to designate the majority of the members of all committees of the Board (subject to Section 1.2(d)).

(c) While Platinum meets the Platinum Ownership Threshold, Platinum shall notify each of Blackstone and ECP upon the Board's formation of any committee in addition to the Audit Committee and the Compensation Committee from time to time. If either of Blackstone and ECP upon such notification promptly notifies Platinum of its desire to have the Board appoint its Director designated

in accordance with Section 1.1(a) as a member of such additional committee, Platinum shall cause the Platinum Directors to consider in good faith such request; provided, however, that if such additional committee is a special committee of the Board, the ECP Director, the Capitol Director and the Blackstone Director shall each have the right to be a member of such committee, in each case, if such Person qualifies as independent with respect to the matters for which such committee is formed.

(d) The right of any Director to serve on a committee shall be subject to applicable Law and the Company's obligation, if any, to comply with any applicable rules of any Approved Stock Exchange.

(e) The Nominees of a Stockholder shall have the right to representation on the board of directors or other similar governing body (or any committee thereof in the case of the Nominees of Platinum) of any Subsidiary of the Company in proportion to their representation on the Board; provided, however, that the Nominee of a Stockholder other than Platinum shall have such right to representation only if and to the extent a Nominee by Platinum is serving on any such board of directors or other similar governing body.

Section 1.3 Operating Council.

(a) Immediately following the execution of this Agreement, the Company shall take all action necessary to form an operating council (the "Operating Council"). The Operating Council shall be responsible for (i) the day-to-day oversight of the Company's and its Subsidiaries' business (but cannot make decisions which would require Board approval), (ii) making recommendations to the Board for Board action and (iii) recommending the agenda for every Board meeting. The Company may not dissolve the Operating Council while Platinum meets the Platinum Ownership Threshold without Platinum's prior written consent.

(b) While Platinum meets the Platinum Ownership Threshold, it shall have the right to nominate all of the members of the Operating Council, which members may be Directors, officers or employees of the Company or any other Persons selected by Platinum; provided, however, that such members shall include the Chairperson, the Chief Executive Officer and the Chief Financial Officer of the Company. While any of Blackstone, Capitol and ECP has the right to designate one (1) Director to the Board and has so designated a Director, it may designate an observer to the Operating Council and the Operating Council shall furnish to such observer at the same time provided to the Operating Council (i) notices of all meetings of the Operating Council, and (ii) copies of the materials with respect to all meetings of the Operating Council.

(c) The Operating Council shall meet monthly in person or by teleconference. The Operating Council shall submit to the Board the report used as an agenda for such meeting.

Section 1.4 Board Quorum and Action by Written Consent. While Platinum has the right to nominate at least one (1) Director to the Board, a quorum of the Board shall require the presence of at least the majority of the Platinum Directors, provided, however, that if a Board meeting is rescheduled twice (no such Board meeting may be rescheduled within any twenty four (24) hour period) because the majority of the Platinum Directors is not present at each such Board meeting, the presence of the majority of the Platinum Directors shall no longer be required to establish a quorum. Any action to be taken by the Board by written consent shall require the signature of at least the majority of the Platinum Directors.

Section 1.5 Special Meetings of the Board. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson, the Chief Executive Officer or any two (2) Directors.

Section 1.6 Actions Requiring Disinterested Director Approval. At any time after the Effective Time, the Company shall not, and shall cause its Subsidiaries not to, enter into any transaction with, or involving, any Affiliate of a Stockholder, other than (a) customary indemnification agreements with Directors and officers of the Company or any Subsidiary of the Company, (b) transactions permitted by Section 1.7(g) and other customary compensation arrangements with employees of the Company or any of its Subsidiaries and (c) any transaction or series of related transactions in the ordinary course of business and on arms-length third-party terms and not involving amounts in excess of $5,000,000 per annum, in each of cases (a), (b) and (c) of this sentence, without the prior approval of the majority of the Directors not nominated by such Stockholder and that are otherwise disinterested in such transaction.

Section 1.7 Actions Requiring Platinum Approval. At any time after the Effective Time that Platinum meets the Platinum Ownership Threshold, the Company shall not, and shall cause its Subsidiaries not to, take, cause to occur or permit to occur, as applicable, or agree to take, cause to occur or permit to occur, as applicable, directly or indirectly, any of the following actions without the prior written approval of Platinum in its capacity as a stockholder of the Company:

(a) enter into or effect a Change in Control;

(b) consummate any acquisition, whether by purchase, contribution, merger, consolidation or otherwise, of any property, assets or Equity Interests for consideration in excess of $50,000,000, in a single transaction or series of related transactions;

(c) consummate any disposition, whether by sale, contribution, merger, consolidation or otherwise, of any property, assets or Equity Interests for consideration in excess of $50,000,000, in a single transaction or series of related transactions;

(d) enter into any joint venture or similar business alliance having a fair market value as of the date of formation thereof in excess of $50,000,000;

(e) initiate a voluntary liquidation, dissolution, receivership, bankruptcy or other insolvency proceeding involving the Company or any Subsidiary of the Company that is a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X under the Exchange Act;

(f) make any material change in the nature of the business of the Company and its Subsidiaries, taken as a whole;

(g) repurchase, redeem, acquire or otherwise purchase any Equity Interests of the Company or any Subsidiary of the Company other than (i) in the open market pursuant to a share repurchase plan, (ii) in accordance with any existing compensation plan of the Company or any Subsidiary of the Company or (iii) from an employee in connection with such employee's termination of employment with the Company or any Subsidiary of the Company, in each of cases (i), (ii) and (iii), that was approved by the Board;

(h) declare dividends on, or reclassify Equity Interests or securities convertible into Equity Interests other than with respect to dividends paid by, or a reclassification of Equity Interests or securities convertible into Equity Interests of, a wholly owned Subsidiary of the Company;

(i) create, incur or assume any indebtedness for borrowed money in excess of $50,000,000 other than borrowings and other extensions of credit under a contract, agreement or similar arrangement (including the asset based lending facility and the existing floor plan financing facilities) in effect as of the Effective Time (without giving effect to any amendment or modification after the Effective Time, unless such amendment or modification is approved by Platinum) or is approved by Platinum after the Effective Time;

(j) other than in the ordinary course of business consistent with past practice, guarantee any indebtedness of, or grant a security interest to, any Person other than the Company and its wholly-owned Subsidiaries;

(k) hire, remove or replace the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of the Company;

(l) amend the charter, bylaws or similar organizational documents of the Company or any of its Subsidiaries;

(m) designate any class of Equity Interests;

(n) issue Equity Interests of the Company or its Subsidiaries other than issuances (i) to the Company or wholly owned Subsidiaries thereof, (ii) to directors, officers or employees of the Company or any Subsidiary of the Company pursuant to a management incentive equity plan approved by the Board or (iii) upon exercise of existing outstanding Equity Interests;

(o) establish or change any employee incentive plan of the Company or any Subsidiary of the Company;

(p) change the accounting policies of the Company or any Subsidiary of the Company other than as required in accordance with United States generally accepted accounting principles, consistently applied, or make any material tax election;

(q) hire, terminate or replace the principal outside counsel or auditor of the Company or any of its Subsidiaries; or

(r) enter into any contract not specifically listed in this Section 1.7(r) involving aggregate payments to or by the Company and its Subsidiaries in excess of $50,000,000 per annum.

Section 1.8 Controlled Company.

(a) The Stockholders acknowledge and agree that by virtue of the voting power of Common Stock held by Platinum and its Affiliates representing more than 50% of the total voting power of the Common Stock outstanding as of the Effective Time, the Company qualifies as a "controlled company" within the rules of the Approved Stock Exchange as of the date hereof.

(b) So long as the Company qualifies as a "controlled company" for purposes of the rules of the Approved Stock Exchange, at Platinum's request, (x) the Company will elect to be a "controlled company" for purposes of the rules of the Approved Stock Exchange, (y) will disclose in its annual meeting proxy statement that it is a "controlled company" and the basis for that determination and (z) file all election notices and other documentation with the Approved Stock Exchange necessary to elect to qualify for the exemptions to any requirements under the rules of the Approved Stock Exchange that do not apply to such "controlled company".

Section 1.9 Special Meetings of Stockholders. Special meetings of the stockholders for any purpose or purposes may be called at any time by the Board or, while Platinum has the right to designate one (1) or more Directors to the Board, by the Board at the request of Platinum, but such special meetings may not be called by any other Person. No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting. The Company may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board, other than meetings called at the request of Platinum in accordance with the first sentence of this Section 1.9.

Section 1.10 Stockholder Action by Written Consent. No action that is required or permitted to be taken by the stockholders of the Company at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders except if at the time such consent would otherwise become effective, Platinum Beneficially Owns a number of shares of Common Stock equal to or greater than 50% of the total number of shares of Common Stock issued and outstanding.

Section 1.11 Stock Exchange Listing. The Company will cause the Company's shares of Common Stock, to be listed on an Approved Stock Exchange.

ARTICLE II
EARNOUT SHARES

Section 2.1 Sponsor Earnout Shares.

(a) Other than in accordance with Section 2.1(g), subject to Section 2.1(c) and Section 2.1(d), no Sponsor may Transfer any of its Sponsor Earnout Shares prior to the third anniversary of the Merger Effective Time. From and after the third anniversary of the Merger Effective Time, the Sponsor Earnout Shares may be Transferred, subject to Section 2.1(h).

(b) Subject to Section 2.1(c) and Section 2.1(d), on (i) the fifth anniversary of the Merger Effective Time, the Minimum Target Sponsor Earnout Shares and the Second Target Sponsor Earnout Shares shall be automatically forfeited by the holders thereof to the Company for no consideration with no further action required of any Person and (ii) on the seventh anniversary of the Merger Effective Time, the Maximum Target Sponsor Earnout Shares shall be forfeited by the holders thereof to the Company for no consideration with no further action required of any Person.

(c) The restrictions and forfeiture provisions set forth in this Section 2.1, including, for avoidance of doubt, Section 2.1(b), shall cease to apply to (i) such Sponsor's Minimum Target Sponsor Earnout Shares upon the first day after the Common Stock Price equals or exceeds $13.00 per share, as adjusted for stock splits, dividends, reorganizations, recapitalizations and the like (the "Minimum Target"), for any period of 20 trading days out of 30 consecutive trading days, (ii) such Sponsor's Second Target Sponsor Earnout Shares upon the first day after the Common Stock Price equals or exceeds $16.00 per share, as adjusted for stock splits, dividends,

reorganizations, recapitalizations and the like (the "Second Target"), for any period of 20 trading days out of 30 consecutive trading days and (iii) such Sponsor's Maximum Target Sponsor Earnout Shares upon the first day after the Common Stock Price equals or exceeds $19.00 per share, as adjusted for stock splits, dividends, reorganizations, recapitalizations and the like (the "Maximum Target"), for any period of 20 trading days out of 30 consecutive trading days.

(d) The restrictions and forfeiture provisions set forth in this Section 2.1, including, for avoidance of doubt, Section 2.1(b), shall cease to apply to (i) such Sponsor's Minimum Target Sponsor Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Minimum Target but less than the Second Target, unless the Minimum Target had previously been satisfied pursuant to Section 2.1(c), (ii) such Sponsor's Minimum Target Sponsor Earnout Shares and Second Target Sponsor Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Second Target but less than the Maximum Target, unless the Second Target had previously been satisfied pursuant to Section 2.1(c), and (iii) such Sponsor's Minimum Target Sponsor Earnout Shares, Second Target Sponsor Earnout Shares and Maximum Target Sponsor Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Maximum Target, unless the Maximum Target had previously been satisfied pursuant to Section 2.1(c).

(e) The Sponsors and the Company acknowledge and agree that:

(i) the Sponsor Earnout Shares shall participate in any dividends or other distributions with respect to Common Stock prior to the date such Sponsor Earnout Shares become Transferable in accordance herewith and thereafter;

(ii) the Sponsor Earnout Shares shall have all voting rights, and the Sponsors shall be entitled to vote on any matter as a holder of Sponsor Earnout Shares, prior to the date such Sponsor Earnout Shares become freely Transferable in accordance herewith and thereafter;

(iii) notwithstanding anything to the contrary herein, the Sponsor Earnout Shares shall remain subject to the restrictions on Transfer under applicable securities Laws of any state, federal or foreign entity and the rules and regulations promulgated thereunder; and

(iv) each certificate evidencing any Sponsor Earnout Shares and each certificate issued in exchange for or upon the Transfer of any Sponsor Earnout Shares (unless such Sponsor Earnout Shares are no longer subject to the restrictions on Transfer and forfeiture provisions set forth in this Section 2.1) shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN AN AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT, DATED AS OF APRIL 1, 2021, AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY") AND CERTAIN OF THE COMPANY'S STOCKHOLDERS, AS AMENDED. A COPY OF SUCH STOCKHOLDERS' AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

The Company shall imprint such legend on certificates evidencing the Sponsor Earnout Shares. The legend set forth above shall be removed from the certificates evidencing any Sponsor Earnout Shares that are no longer subject to the restrictions on Transfer and forfeiture provisions set forth in this Section 2.1.

(f) Any purported Transfer of Sponsor Earnout Shares in violation of this Agreement shall be null and void, and the Company shall refuse to recognize any such Transfer for any purpose.

(g) Notwithstanding anything to the contrary in this Section 2.1, Transfers of Sponsor Earnout Shares are permitted (i) to Permitted Transferees who shall (A) be subject to the restrictions in this Section 2.1 as if they were the original holders of such Sponsor Earnout Shares and (B) promptly Transfer such Sponsor Earnout Shares back to the applicable Sponsor if they cease to be a Permitted Transferee for any reason prior to the date such Sponsor Earnout Shares become freely Transferable in accordance herewith; (ii) in the case of an individual, by a gift to a member of the individual's immediate family or to a trust, the beneficiary of which is a member of

one of the individual's immediate family, an Affiliate of such person or to a charitable organization; (iii) in the case of an individual, by virtue of Laws of descent and distribution upon death of the individual; or (iv) in the case of an individual, pursuant to a qualified domestic relations order; provided, however, that these Transferees must become a party to this Agreement by executing and delivering such documents as may be necessary to make such Transferee a party hereto.

(h) Notwithstanding anything to the contrary in this Section 2.1, for so long as the applicable Sponsor Earnout Shares are subject to the forfeiture provisions set forth in this Section 2.1, prior to any Transfer of any Sponsor Earnout Shares, the Transferee of such Sponsor Earnout Shares shall agree in a duly and validly executed writing for the benefit of the Company that such Sponsor Earnout Shares remain subject to the forfeiture provisions set forth in this Section 2.1.

Section 2.2 NESCO Holder Earnout Shares.

(a) Subject to Section 2.2(b) and Section 2.2(c), on (i) the fifth anniversary of the Merger Effective Time, the Minimum Target NESCO Holder Earnout Shares and the Second Target NESCO Holder Earnout Shares shall be automatically forfeited by the holders thereof to the Company for no consideration with no further action required of any Person and (ii) on the seventh anniversary of the Merger Effective Time, the Maximum Target NESCO Holder Earnout Shares shall be forfeited by the holders thereof to the Company for no consideration with no further action required of any Person. For avoidance of doubt, to the extent that Earnout Shares (used herein as defined in the Merger Agreement) are issued pursuant to satisfaction of Section 2.06(a)(i) - (iii) of the Merger Agreement or Section 2.06(b)(i) - (iii) of the Merger Agreement, such Earnout Shares shall not be subject to the forfeiture provisions set forth in this Section 2.2.

(b) The forfeiture provisions set forth in this Section 2.2 shall cease to apply to (i) the Minimum Target NESCO Holder Earnout Shares upon the first day after the Common Stock Price equals or exceeds the Minimum Target for any period of 20 trading days out of 30 consecutive trading days, (ii) the Second Target NESCO Holder Earnout Shares upon the first day after the Common Stock Price equals or exceeds the Second Target for any period of 20 trading days out of 30 consecutive trading days and (iii) the Maximum Target NESCO Holder Earnout Shares upon the first day after the Common Stock Price equals or exceeds the Maximum Target for any period of 20 trading days out of 30 consecutive trading days.

(c) The forfeiture provisions set forth in this Section 2.2 shall cease to apply to (i) the Minimum Target NESCO Holder Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Minimum Target but less than the Second Target, unless the Minimum Target had previously been satisfied pursuant to Section 2.2(b), (ii) the Minimum Target NESCO Holder Earnout Shares and Second Target NESCO Holder Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Second Target but less than the Maximum Target, unless the Second Target had previously been satisfied pursuant to Section 2.2(b), and (iii) the Minimum Target NESCO Holder Earnout Shares, Second Target NESCO Holder Earnout Shares and Maximum Target NESCO Holder Earnout Shares immediately prior to a Change in Control if the Change in Control Consideration paid or payable to the stockholders of the Company in connection with such Change in Control is equal to or greater than the Maximum Target, unless the Maximum Target had previously been satisfied pursuant to Section 2.2(b).

(d) The NESCO Holder and the Company acknowledge and agree that:

(i) notwithstanding anything to the contrary herein, the NESCO Holder Earnout Shares shall remain subject to the restrictions on Transfer under applicable securities Laws of any state, federal or foreign entity and the rules and regulations promulgated thereunder; and

(ii) each certificate evidencing any NESCO Holder Earnout Shares and each certificate issued in exchange for or upon the Transfer of any NESCO Holder Earnout Shares (unless such NESCO Holder Earnout Shares are no longer subject to the forfeiture provisions set forth in this Section 2.2) shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS AND OTHER PROVISIONS SET FORTH IN AN AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT, DATED AS OF APRIL 1, 2021, AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY") AND CERTAIN OF THE COMPANY'S STOCKHOLDERS, AS AMENDED. A COPY OF SUCH STOCKHOLDERS' AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

The Company shall imprint such legend on certificates evidencing the NESCO Holder Earnout Shares. The legend set forth above shall be removed from the certificates evidencing any NESCO Holder Earnout Shares that are no longer subject to the forfeiture provisions set forth in this Section 2.2.

(e) Notwithstanding anything to the contrary in this Section 2.2, for so long as the applicable NESCO Holder Earnout Shares are subject to the forfeiture provisions set forth in this Section 2.2, prior to any Transfer of any NESCO Holder Earnout Shares, the Transferee of such NESCO Holder Earnout Shares shall agree in a duly and validly executed writing for the benefit of the Company that such NESCO Holder Earnout Shares remain subject to the forfeiture provisions set forth in this Section 2.2. Any purported Transfer of NESCO Holder Earnout Shares in violation of this Section 2.2 shall be null and void, and the Company shall refuse to recognize any such Transfer for any purpose.

ARTICLE III
OTHER TRANSFER RESTRICTIONS, DRAG-ALONG

Section 3.1 Restrictions on Transfer of Common Stock.

(a) Notwithstanding anything to the contrary in ARTICLE IV, during the period commencing on the date hereof and ending on the date that is eighteen (18) months following the date of this Agreement (the "Lockup Period"), Platinum shall not Transfer any shares of Common Stock Beneficially Owned or otherwise held by it other than (i) in accordance with Section 3.1(f), (ii) upon approval by each of Blackstone and ECP (each, while it owns 5% or more of the Common Stock on a fully diluted basis (calculated using the treasury stock method), and in such capacity a "Qualifying Stockholder"), (iii) in a Transfer that is part of a transaction unanimously approved by the Board or (iv) subject to Section 3.1(b), in a Transfer in which the consideration paid or payable for such shares of Common Stock equals or exceeds $8 per share as adjusted for stock splits, dividends, reorganizations, recapitalizations and the like (the "Trigger Price").

(b) At least ten (10) Business Days prior to the anticipated closing date of a Transfer in accordance with Section 3.1(a)(iv) that is a registered underwritten public follow-on offering (a "Trigger Transfer"), Platinum shall notify (the "Trigger Notice") each Qualifying Stockholder and Capitol. Each of the Qualifying Stockholders and Capitol and their respective Affiliates that notifies Platinum within five (5) Business Days following its receipt of the Trigger Notice of its desire to participate in such Trigger Transfer (a "Participating Stockholder") shall have the right to participate in such Trigger Transfer in accordance with the provisions set forth in Section 3.1(c) and Section 3.1(d), as applicable.

(c) With respect to the first $200,000,000 in total proceeds raised in Trigger Transfers during the Lockup Period, each Participating Stockholder (other than Capitol) shall have the right to sell a number of shares of Common Stock equal to the lesser of (i) the number of shares of Common Stock that Platinum sells in such Trigger Transfer and (ii) the number of shares of Common Stock that such Participating Stockholder desires to sell in such Trigger Transfer; provided, however, that to the extent a Participating Stockholder (other than Capitol) desires to sell less than the number of shares of Common Stock that Platinum sells in such Trigger Transfer, Platinum and the other Participating Stockholders (other than Capitol) shall be entitled to each additionally sell an equal percentage of the amount of such deficit. Capitol shall have the right to participate in a Trigger Transfer contemplated by this Section 3.1(c) in which ECP is a Participating Stockholder with respect to a number of shares of Common Stock equal to the product of (x) the number of shares of Common Stock ECP has a right to sell in such Trigger Transfer in accordance with the provisions of this paragraph (disregarding any reduction thereof in accordance with this sentence) times (y) a fraction, the denominator of which is the number of shares of Common Stock held by both ECP and Capitol and the numerator of which is the number of shares of Common Stock held by Capitol, and the number of shares of Common Stock that ECP has a right to sell in such Trigger Sale shall be reduced by the number of shares of Common Stock that Capitol elects to sell pursuant to this sentence.

(d) With respect to total proceeds in excess of $200,000,000 raised in Trigger Transfers during the Lockup Period, each Participating Stockholder shall have the right to sell a number of shares of Common Stock equal to the lower of (i) the product of (A) the number of shares of Common Stock subject to such Trigger Transfer times (B) a fraction, the denominator of which is the number of shares of Common Stock held by Platinum and the Participating Stockholders and the numerator of which is the number of shares of Common Stock held by such Participating Stockholder and (ii) the number of Shares of Common Stock that such Participating Stockholder desires to sell.

(e) The Stockholders and the Company acknowledge and agree that:

(i) notwithstanding anything to the contrary herein, the shares of Common Stock and warrants to purchase shares of Common Stock, in each case, held by a Stockholder shall remain subject to the restrictions on Transfer under applicable securities Laws of any state, federal or foreign entity and the rules and regulations promulgated thereunder; and

(ii) each certificate evidencing any shares of Common Stock held by a Stockholder and each certificate issued in exchange for or upon the Transfer of any shares of Common Stock held by a Stockholder (unless such shares are no longer subject to the restrictions on Transfer set forth in this ARTICLE III) shall be stamped or otherwise imprinted with a legend in substantially the form set forth in Section 2.1(e)(iv). The Company shall imprint such legend on certificates evidencing the shares of Common Stock held by each Stockholder. The legend set forth above shall be removed from the certificates evidencing any shares of Common Stock held by a Stockholder that are no longer subject to the restrictions on Transfer set forth in this ARTICLE III.

(f) Notwithstanding anything to the contrary in this ARTICLE III, Transfers of shares of Common Stock and warrants to purchase shares of Common Stock are permitted (i) to Permitted Transferees who shall (A) be subject to the restrictions in this ARTICLE III as if they were the original holders of such shares or warrants and (B) promptly Transfer such shares or warrants back to the applicable Shareholder if they cease to be a Permitted Transferee for any reason prior to the date such shares or warrants become freely Transferable in accordance herewith; (ii) in the case of an individual, by a gift to a member of the individual's immediate family or to a trust, the beneficiary of which is a member of one of the individual's immediate family, an Affiliate of such person or to a charitable organization; (iii) in the case of an individual, by virtue of Laws of descent and distribution upon death of the individual; or (iv) in the case of an individual, pursuant to a qualified domestic relations order; provided, however, that these Transferees must become a party to this Agreement by executing and delivering such documents as may be necessary to make such Transferee a party hereto.

Section 3.2 Certain Change in Control Transactions. During the Lockup Period, Platinum shall not vote its Common Stock in favor of any transaction that, if consummated, would result in a Change in Control or in which an Affiliate of Platinum participates, other than a transaction (a) unanimously approved by the Board, (b) consented to in writing by the Qualifying Stockholders, or (c) in which the Change in Control Consideration paid or payable to any of Blackstone, ECP, Capitol or the Management Holders (i) would consist of only cash or publicly-traded securities and (ii) would be equal to or in excess of the Trigger Price. From and after the date hereof, if Platinum or an Affiliate of Platinum proposes an acquisition of the Company, "take private" transaction or any similar transaction by Platinum or one or more of its Affiliates or Platinum does not receive the same form of consideration as the other stockholders of the Company in a Change of Control transaction, such transaction shall require, in addition to any other approvals required with respect thereto, approval by (A) a majority of the Directors not nominated by Platinum and that are otherwise disinterested in such transaction or a special committee of independent Directors and (B) while ECP owns 5% or more of the Common Stock on a fully diluted basis (calculated using the treasury stock method), a majority of the stockholders of the Company that are independent of Platinum and otherwise disinterested in such transaction.

Section 3.3 Drag-Along Rights.

(a) Subject to the provisions of Section 3.1 and Section 3.2 if, at any time while Platinum Beneficially Owns a number of shares of Common Stock equal to or greater than 50% of the total number of shares of Common Stock issued and outstanding (on a Non-Fully Diluted Basis), Platinum receives a bona fide offer from a third party to purchase or otherwise desires to Transfer shares of Common Stock to a third party on arm's length terms (a "Sale Proposal"), including Common Stock owned by other Stockholders (the "Drag Shares"), and (i) such Sale Proposal, if consummated, would result in a Change in Control (taking into account all shares of Common Stock being "dragged"), (ii) such Sale Proposal does not involve the transfer of Drag Shares to Platinum or an Affiliate of Platinum and (iii) in such Sale Proposal, if consummated, Platinum would receive the same form of consideration as the other stockholders of the Company (a "Required Sale"), then Platinum may deliver a written notice (a "Required Sale Notice") with respect to

such Sale Proposal at least ten (10) Business Days prior to the anticipated closing date of such Required Sale to all other Stockholders requiring them to sell or otherwise Transfer their Common Stock to the proposed transferee in accordance with the provisions of this Section 3.3(a).

(b) The Required Sale Notice shall include the material terms and conditions of the Required Sale, including (i) the name and address of the proposed transferee, (ii) the proposed amount and form of consideration (and if any portion of the consideration is other than cash, any material information made available to Platinum with respect to such non-cash consideration that a Stockholder may reasonably request); provided, however, that the provision of such information (or, except with respect to (i) and (ii) of this sentence, lack thereof) shall not relieve any Stockholder of its obligation to sell or otherwise Transfer its Common Stock under this Section 3.3(b) and (iii) the proposed Transfer date, if known. Platinum shall deliver or cause to be delivered to each other Stockholder a copy of the final sale agreement for the Required Sale as soon as reasonably practicable after the same becomes available.

(c) Each Stockholder, upon receipt of a Required Sale Notice, shall be obligated to sell or otherwise Transfer, the same proportion of its Common Stock as is being Transferred by Platinum and to otherwise participate in the Required Sale contemplated by the Sale Proposal, to vote, if required by this Agreement or otherwise, its Common Stock in favor of the Required Sale at any meeting of the Company's stockholders called to vote on or approve the Required Sale and/or to consent in writing to the Required Sale, to waive all dissenters' or appraisal or similar rights, if any, in connection with the Required Sale and to take all actions as may be reasonably necessary to consummate the Required Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, with terms and conditions that are no worse to such Stockholder than the agreements being entered into and the certificates being delivered by Platinum relating to the Required Sale, and to agree (as to itself) to make to the proposed purchaser the same representations, warranties, covenants, indemnities and agreements as Platinum agrees to make in connection with the Required Sale, and to take or cause to be taken all other actions as may be reasonably necessary to consummate the Required Sale; provided, however, that unless otherwise agreed by any Stockholder, (w) a Stockholder shall not be required to make representations and warranties (but, subject to clause (z) below, shall be required to provide several but not joint indemnities with respect to breaches of representations, warranties and covenants made, and all other actions taken in connection therewith, by, or with respect to, the Company or its Subsidiaries) or provide indemnities as to any other Stockholder and a Stockholder shall not be required to make any representations and warranties about the business of the Company or its Subsidiaries, (x) no Stockholder shall be liable for the breach of any covenant by any other Stockholder, (y) no Stockholder shall be required to enter into any agreement not to compete (or other restrictive covenant) with the Company or any of its Subsidiaries in connection with the Required Sale, and (z) notwithstanding anything in this Section 3.3(c) to the contrary, any liability relating to representations and warranties and covenants (and related indemnities) and other indemnification, escrow or continuing obligations regarding the business of the Company or its Subsidiaries in connection with the Required Sale shall be shared by a Stockholder in proportion to the proceeds received by such Stockholder and in any event shall not exceed the proceeds received by such Stockholder in the Required Sale.

ARTICLE IV
REGISTRATION RIGHTS

Section 4.1 Demand Registrations.

(a) Requests for Registration. Subject to the terms and conditions of this Agreement and following the expiration of the period commencing on the date of this Agreement and ending on the three (3) month anniversary thereof (the "Registration Lockup Period"), the holders of at least a majority of (i) the Platinum Registrable Securities, (ii) the Blackstone Registrable Securities, (iii) the ECP Registrable Securities, or (iv) the Sponsor Registrable Securities (the holders listed in clauses (i) through (iv) of this sentence, the "Demand Holders") may, in each case, request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-1 or any similar long-form registration ("Long-Form Registrations"), or on Form S-3 or any similar short-form registration ("Short-Form Registrations") if available; provided, however, that each Demand Holder may only make six (6) such requests. All registrations requested pursuant to this Section 4.1(a) are referred to herein as "Demand Registrations". Demand Registrations shall be underwritten offerings upon the request of a Demanding Holder. The Demand Holders requesting a Demand Registration also may request that the registration be made pursuant to Rule 415 under the Securities Act (a "Shelf Registration") and, if the Company is a WKSI at the time any request for a Demand Registration is submitted to the Company, that such Shelf Registration be an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) (an "Automatic Shelf Registration Statement"). Each request for a

Demand Registration shall specify the approximate number of Registrable Securities requested to be registered and the intended method of distribution. Within ten (10) days after receipt of any such request, the Company shall give written notice of the Demand Registration to all other Holders and, subject to the terms of Section 4.1(e), shall include in such Demand Registration (and in all related registrations and qualifications under state blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the Company issues such notice. Each Holder agrees that such Holder shall treat as confidential the receipt of the notice of Demand Registration and shall not disclose or use the information contained in such notice of Demand Registration without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement.

(b) Long-Form Registrations. The Company shall pay all Registration Expenses in connection with any Long-Form Registration. The aggregate offering value of the Registrable Securities requested to be registered in any Long-Form Registration must equal at least $10,000,000. All Long-Form Registrations shall be underwritten registrations unless otherwise approved by the Demand Holders requesting registration.

(c) Short-Form Registrations. The Company shall pay all Registration Expenses in connection with any Short-Form Registration. Demand Registrations shall be Short-Form Registrations whenever the Company is permitted to use any applicable short form and if the managing underwriters (if any) agree to the use of a Short-Form Registration.

(d) Shelf Registrations.

(i) In the event that a registration statement under the Securities Act for the Shelf Registration (a "Shelf Registration Statement") is effective, the Demand Holders whose Registrable Securities are covered by such Shelf Registration Statement shall each have the right at any time or from time to time following the expiration of the Registration Lockup Period, to elect to sell pursuant to an offering (including an underwritten offering) Registrable Securities available for sale pursuant to such Shelf Registration Statement ("Shelf Registrable Securities"), so long as the Shelf Registration Statement remains in effect, and the Company shall pay all Registration Expenses in connection therewith. The applicable Demand Holders shall make such election by delivering to the Company a written notice (a "Shelf Offering Notice") with respect to such offering specifying the number of Shelf Registrable Securities that they desire to sell pursuant to such offering (the "Shelf Offering"). As promptly as practicable, but no later than two (2) Business Days after receipt of a Shelf Offering Notice, the Company shall give written notice of such Shelf Offering Notice to all other holders of Shelf Registrable Securities. The Company, subject to Sections 4.1(e) and 4.7, shall include in such Shelf Offering the Shelf Registrable Securities of any other holder of Shelf Registrable Securities that shall have made a written request to the Company for inclusion in such Shelf Offering (which request shall specify the maximum number of Shelf Registrable Securities intended to be disposed of by such holder) within five (5) Business Days after the receipt of the Shelf Offering Notice. The Company shall, as expeditiously as possible (and in any event within 20 days after the receipt of a Shelf Offering Notice), but subject to Section 4.1(f), use its reasonable best efforts to facilitate such Shelf Offering. Each Holder agrees that such Holder shall treat as confidential the receipt of the Shelf Offering Notice and shall not disclose or use the information contained in the Company's notice regarding the Shelf Offering Notice without the prior written consent of the Company and the Holders delivering such Shelf Offering Notice until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement.

(ii) If a Demand Holder wishes to engage in an underwritten block trade, variable price reoffer or overnight underwritten offering, in each case, off of a Shelf Registration Statement (either through filing an Automatic Shelf Registration Statement or through a take-down from an already existing Shelf Registration Statement), then, notwithstanding the time periods set forth in Section 4.1(d)(i) but only following the expiration of the Registration Lockup Period, such holder shall notify the Company not less than two (2) Business Days prior to the day such offering is to commence. The Company shall promptly notify all other Holders of such offering, and such other Holders must elect whether or not to participate by the next Business Day (*i.e.*, one Business Day prior to the day such offering is to commence) (unless a longer period is agreed to by such Demand Holder) wishing to engage in the underwritten block trade), and the Company shall as expeditiously as possible use its reasonable best efforts to facilitate such offering (which may close as early as two (2) Business Days after the date it commences); provided, however, that such Demand Holder shall use commercially reasonable efforts to work with the Company and the underwriters prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the transaction.

(iii) Subject to Section 4.1(f)(ii), the Company shall, at the request of a Demand Holder whose Shelf Registrable Securities are covered by a Shelf Registration Statement, file any prospectus supplement or any post-effective amendments and otherwise take any action necessary to include therein all disclosures and language deemed necessary or advisable by such holders to effect such Shelf Offering.

(e) Priority on Demand Registrations and Shelf Offerings. The Company shall not include in any Demand Registration or Shelf Offering any securities which are not Registrable Securities without the prior written consent of the Holders holding at least a majority of the Registrable Securities initially requesting such registration. If a Demand Registration or a Shelf Offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, which can be sold therein without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company shall include in such offering prior to the inclusion of any securities which are not Registrable Securities the number of Registrable Securities requested to be included which, in the opinion of such underwriters, can be sold, without any such adverse effect, *pro rata* among the respective holders thereof on the basis of the amount of Registrable Securities owned by each such holder; provided, however, notwithstanding anything to the contrary in this ARTICLE IV, if during the Lockup Period ECP has not Transferred any of its shares of Common Stock (excluding Transfers to Permitted Transferees), then, until the earlier of (a) eighteen (18) months following the expiration of the Lockup Period and (b) the time at which ECP Transfers any shares of Common Stock, ECP shall have the right to demand one (1) Demand Registration or Shelf Offering in which the Company shall allocate (i) with respect to the first $200,000,000 in total proceeds raised thereby, at least 33% of such offering to shares of Common Stock held by ECP and Capitol on the basis of the amount of Registrable Securities owned by each of them and (ii) with respect to proceeds raised in excess of $200,000,000, a *pro rata* portion to ECP and Capitol on the basis of the amount of Registrable Securities owned by each of them as a portion of the total amount of Registrable Securities then issued and outstanding.

(f) Restrictions on Demand Registration and Shelf Offerings.

(i) The Company shall not be obligated to effect any Demand Registration or underwritten Shelf Offering at any time during the Registration Lockup Period or within 60 days after the effective date of a previous Demand Registration or a previous registration in which Registrable Securities were included pursuant to Section 4.2.

(ii) The Company may postpone for up to 90 days from the date of the request (the "Suspension Period"), the filing or the effectiveness of a registration statement for a Demand Registration or suspend the use of a prospectus that is part of a Shelf Registration Statement (and therefore suspend sales of the Shelf Registrable Securities) by providing written notice to the Holders if (A) the Board determines in its reasonable good faith judgment that the offer or sale of Registrable Securities would reasonably be expected to have a material adverse effect on any proposal or plan by the Company or any of its Subsidiaries to engage in any material acquisition of assets or stock (other than in the ordinary course of business) or any material merger, consolidation, tender offer, recapitalization, reorganization or other financially material transaction involving the Company, (B) the sale of Registrable Securities pursuant to the registration statement would require disclosure of non-public material information not otherwise required to be disclosed under applicable law, and (C) (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction, (y) disclosure would have a material adverse effect on the Company or the Company's ability to consummate such transaction or (z) such transaction renders the Company unable to comply with requirements of the SEC, in each case under circumstances that would make it impractical or inadvisable to cause the Shelf Registration Statement (or such filings) to become effective or to promptly amend or supplement the Shelf Registration Statement on a post effective basis, as applicable; provided, however, that, in such event, the Holders initially requesting such Demand Registration shall be entitled to withdraw such request, and if such request is withdrawn, such Demand Registration shall not count as one of the permitted Demand Registrations hereunder and the Company shall pay all Registration Expenses in connection with such registration. The Company may delay or suspend the effectiveness of a Demand Registration or Shelf Offering pursuant to this Section 4.1(f)(ii) only once in any consecutive twelve (12)-month period; provided, however, that, for the avoidance of doubt, the Company may in any event delay or suspend the effectiveness of Demand Registration or Shelf Offering in the case of an event described under Section 4.4(a)(vi) to enable it to comply with its obligations set forth in Section

4.4(a)(vi). If the conditions set forth in clauses (A) through (C) above are satisfied, the Company may extend the Suspension Period for an additional consecutive 60 days with the consent of the Holders holding a majority of the Registrable Securities initially requesting such registration.

(iii) In the case of an event that causes the Company to suspend the use of a Shelf Registration Statement as set forth in paragraph (f)(ii) above or pursuant to Section 4.4(a)(xiv) (a "Suspension Event"), the Company shall give a notice to the Holders registered pursuant to such Shelf Registration Statement (a "Suspension Notice") to suspend sales of the Registrable Securities, and such notice shall state generally the basis for the notice and that such suspension shall continue only for so long as the Suspension Event or its effect is continuing; provided that the Company shall not be permitted to deliver more than one Suspension Notice during any consecutive twelve (12) month period or for a period exceeding ninety (90) days. A Holder shall not effect any sales of its Registrable Securities pursuant to such Shelf Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice (as defined below). Each Holder agrees that it shall treat as confidential the receipt of the Suspension Notice and shall not disclose or use the information contained in such Suspension Notice without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by such Holder in breach of the terms of this Agreement. A Holder may recommence effecting sales of the Registrable Securities pursuant to the Shelf Registration Statement (or such filings) following further written notice to such effect (an "End of Suspension Notice") from the Company, which End of Suspension Notice shall be given by the Company to the holders and to the holders' counsel, if any, promptly following the conclusion of any Suspension Event.

(iv) Notwithstanding any provision herein to the contrary, if the Company shall give a Suspension Notice with respect to any Shelf Registration Statement pursuant to Section 4.1(f)(iii), the Company agrees that it shall extend the period of time during which such Shelf Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from the date of receipt by the holders of the Suspension Notice to and including the date of receipt by the holders of the End of Suspension Notice and provide copies of the supplemented or amended prospectus necessary to resume sales with respect to each Suspension Event; provided, however, that such period of time shall not be extended beyond the date that shares of Common Stock covered by such Shelf Registration Statement are no longer Registrable Securities.

(g) Selection of Underwriters. The Demand Holders requesting any Demand Registration shall have the right to select the investment banker(s) and manager(s) to administer the offering. If any Shelf Offering is an underwritten offering, the Demand Holders requesting such underwritten offering shall have the right to select the investment banker(s) and manager(s) to administer the offering relating to such Shelf Offering. The Company represents and warrants that no investment bankers are entitled to any rights that would conflict with the rights of the Holders under this Section 4.1(g).

(h) Other Registration Rights. The Company represents and warrants that it is not a party to, or otherwise subject to, any other agreement granting registration rights to any other Person with respect to any securities of the Company. Except as provided in this Agreement, the Company shall not grant to any Persons the right to request the Company or any Subsidiary to register any Equity Interests of the Company or any Subsidiary, or any securities convertible or exchangeable into or exercisable for such securities, without the prior written consent of the Holders holding a majority of the Registrable Securities; provided, however, that the Company may grant rights to other Persons to participate in Piggyback Registrations so long as such rights are subordinate to the rights of the Holders with respect to such Piggyback Registrations as set forth in Section 4.2(c).

(i) Revocation of Demand Notice or Shelf Offering Notice. At any time prior to the effective date of the registration statement relating to a Demand Registration or the "pricing" of any offering relating to a Shelf Offering Notice, the Holders that provided such Demand Registration or Shelf Offering Notice may revoke such Demand Registration or Shelf Offering Notice on behalf of all Holders participating in such Demand Registration or Shelf Offering without liability to such Holders, in each case by providing written notice to the Company.

Section 4.2 Piggyback Registrations.

(a) Right to Piggyback. Whenever following the expiration of the Registration Lockup Period the Company proposes to register any of its securities under the Securities Act (other than pursuant to a Demand Registration or in connection with registrations on Form S-4 or S-8 promulgated by the SEC or any successor or similar forms) and the registration form to be used may be used for the registration of Registrable Securities (a "Piggyback Registration"), the Company shall give written notice at least five (5) Business Days prior to the filing of the registration statement relating to the Piggyback Registration to all Holders of its intention to effect such Piggyback Registration and, subject to the terms of Section 4.2(c) and Section 4.1(e), shall include in such Piggyback Registration (and in all related registrations or qualifications under blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within two (2) Business Days after delivery of the Company's notice.

(b) Piggyback Expenses. The Registration Expenses of the Holders shall be paid by the Company in all Piggyback Registrations, whether or not any such registration became effective.

(c) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their sole opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company shall include in such registration (i) first, the securities the Company proposes to sell, (ii) second, the Registrable Securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect, *pro rata* among the holders of such Registrable Securities on the basis of the number of shares owned by each such holder, and (iii) third, other securities requested to be included in such registration which, in the sole opinion of the underwriters, can be sold without any such adverse effect.

(d) Selection of Underwriters. If any Piggyback Registration is an underwritten offering, the investment banker(s) and manager(s) for the offering shall be selected by the Company.

(e) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it as a primary offering under this Section 4.2 whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 4.5.

Section 4.3 Holdback Agreements.

(a) Holders. Each and every Holder shall enter into lock-up agreements with the managing underwriter(s) of an underwritten Public Offering providing that, unless the underwriters managing such underwritten Public Offering otherwise agree in writing, subject to customary exceptions such Holder shall not (i) offer, sell, contract to sell, pledge (excluding *bona fide* pledges pursuant to margin loans or similar arrangements) or otherwise dispose of (including sales pursuant to Rule 144), directly or indirectly, any Equity Interests of the Company (including Equity Interests of the Company that may be deemed to be owned beneficially by such holder in accordance with the rules and regulations of the SEC) (collectively, "Securities"), (ii) enter into a transaction which would have the same effect as described in clause (i) above, (iii) enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences or ownership of any Securities, whether such transaction is to be settled by delivery of such Securities, in cash or otherwise (each of (i), (ii) and (iii) above, a "Sale Transaction"), or (iv) publicly disclose the intention to enter into any Sale Transaction, commencing on the earlier of the date on which the Company gives notice to the Holders that a preliminary prospectus has been circulated for such Public Offering or the "pricing" of such offering and continuing to the date that is no longer than 90 days following the date of the final prospectus for such Public Offering (or such shorter period that is required by the managing underwriter(s)) (the "Holdback Period").

(b) The Company. The Company (i) shall not file any registration statement for a Public Offering or cause any such registration statement to become effective, or effect any public sale or distribution of its Equity Interests during any Holdback Period and (ii) shall use its reasonable best efforts to cause (A) each holder of at least 5% (on a fully-diluted basis) of its shares of Common Stock, or any securities convertible into or exchangeable or exercisable for shares of Common Stock, and (B) each of its Directors and executive officers to agree not to effect any Sale Transaction during any Holdback Period, except as part of such underwritten registration, if otherwise permitted, unless the underwriters managing the Public Offering otherwise agree in writing.

Section 4.4 Registration Procedures.

(a) Whenever the Holders have requested that any Registrable Securities be registered pursuant to this Agreement or have initiated a Shelf Offering, the Company shall use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall as expeditiously as possible:

(i) in accordance with the Securities Act and all applicable rules and regulations promulgated thereunder, prepare and file with the SEC a registration statement, and all amendments and supplements thereto and related prospectuses, with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective (provided, however, that, before filing a registration statement or prospectus or any amendments or supplements thereto, the Company shall furnish to the counsel selected by the Holders holding a majority of the Registrable Securities covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(ii) notify each Holder of (A) the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose, (B) the receipt by the Company or its counsel of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (C) the effectiveness of each registration statement filed hereunder;

(iii) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period ending when all of the securities covered by such registration statement have been disposed of in accordance with the intended methods of distribution by the sellers thereof set forth in such registration statement (but not in any event before the expiration of any longer period required under the Securities Act or, if such registration statement relates to an underwritten Public Offering, such longer period as in the opinion of counsel for the underwriters a prospectus is required by law to be delivered in connection with sale of Registrable Securities by an underwriter or dealer) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iv) furnish to each seller of Registrable Securities thereunder such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), each Free-Writing Prospectus and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided, however, that the Company shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 4.4(a)(v), (B) consent to general service of process in any such jurisdiction or (C) subject itself to taxation in any jurisdiction where it would not otherwise be subject to taxation);

(vi) notify each seller of such Registrable Securities (A) promptly after it receives notice thereof, of the date and time when such registration statement and each post-effective amendment thereto has become effective or a prospectus or supplement to any prospectus relating to a registration statement has been filed and when any registration or qualification has become effective under a state securities or blue sky law or any exemption thereunder has been obtained, (B) promptly after receipt thereof, of any request by the SEC for the amendment or supplementing of such registration statement or prospectus or for additional information, and (C) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, subject to Section 4.1(f), at the request of any such seller, the Company shall use its reasonable best efforts to prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(vii) use reasonable best efforts to cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, to be listed on a securities exchange and, without limiting the generality of the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with FINRA;

(viii) use reasonable best efforts to provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(ix) enter into and perform such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Holders holding a majority of the Registrable Securities being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, effecting a stock split, combination of shares, recapitalization or reorganization);

(x) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate and business documents and properties of the Company as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors, employees, agents, representatives and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(xi) take all reasonable actions to ensure that any Free-Writing Prospectus utilized in connection with any Demand Registration or Piggyback Registration hereunder complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, shall not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xii) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158;

(xiii) permit any Holder which holder, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company to participate in the preparation of such registration or comparable statement and to allow such holder to provide language for insertion therein, in form and substance reasonably satisfactory to the Company, which in the reasonable judgment of such holder and its counsel should be included;

(xiv) in the event of the issuance of any stop order suspending the effectiveness of a registration statement or the issuance of any order suspending or preventing the use of any related prospectus or suspending the qualification of any shares of Common Stock included in such registration statement for sale in any jurisdiction, use reasonable best efforts promptly to obtain the withdrawal of such order;

(xv) use its reasonable best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(xvi) cooperate with the Holders covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement and enable such securities to be in such denominations and registered in such names as the managing underwriter, or agent, if any, or such holders may request;

(xvii) cooperate with each Holder covered by the registration statement and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xviii) use its reasonable best efforts to make available the executive officers of the Company to participate with the Holders and any underwriters in any "road shows" or other selling efforts that may be reasonably requested by the Holders in connection with the methods of distribution for the Registrable Securities;

(xix) in the case of any underwritten offering, use its reasonable best efforts to obtain one or more comfort letters from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by comfort letters;

(xx) in the case of an underwritten offering, use its reasonable best efforts to provide a legal opinion of the Company's outside counsel, dated the effective date of such registration statement (and, if such registration includes an underwritten Public Offering, dated the date of the closing under the underwriting agreement), the registration statement, each amendment and supplement thereto, the prospectus included therein (including the preliminary prospectus) and such other documents relating thereto in customary form and covering such matters of the type customarily covered by legal opinions of such nature, which opinion shall be addressed to the underwriters;

(xxi) if the Company files an Automatic Shelf Registration Statement covering any Registrable Securities, use its reasonable best efforts to remain a WKSI (and not become an ineligible issuer (as defined in Rule 405 under the Securities Act)) during the period during which such Automatic Shelf Registration Statement is required to remain effective and, if WKSI status is lost, to file an amendment to the Automatic Shelf Registration Statement to convert it into a Shelf Registration Statement as promptly as practicable;

(xxii) if the Company does not pay the filing fee covering the Registrable Securities at the time an Automatic Shelf Registration Statement is filed, pay such fee at such time or times as the Registrable Securities are to be sold; and

(xxiii) if the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year, refile a new Automatic Shelf Registration Statement covering the Registrable Securities, and, if at any time when the Company is required to re-evaluate its WKSI status the Company determines that it is not a WKSI, use its reasonable best efforts to refile the Shelf Registration Statement on Form S-3 and, if such form is not available, Form S-1 and keep such registration statement effective during the period during which such registration statement is required to be kept effective.

(b) If the Company files any Automatic Shelf Registration Statement for the benefit of the holders of any of its securities other than the Holders, and the Holders do not request that their Registrable Securities be included in such Shelf Registration Statement, the Company agrees that, once it is eligible to rely on Rule 430B, at the request of the Holders holding a majority of the Registrable Securities, it shall include in such Automatic Shelf Registration Statement such disclosures as may be required by Rule 430B in order to ensure that the Holders may be added to such Shelf Registration Statement at a later time through the filing of a prospectus supplement rather than a post-effective amendment.

(c) The Company may require each seller of Registrable Securities as to which any registration is being effected to furnish the Company such information required by law to be included in such registration regarding such seller and the distribution of such securities as the Company may from time to time reasonably request in writing.

(d) If Platinum, Blackstone, ECP, the Sponsors or any of their respective Affiliates seek to effectuate an in-kind distribution of all or part of their respective Registrable Securities to their respective direct or indirect equityholders, the Company shall, subject to any applicable lock-ups, use reasonable best efforts to facilitate such in-kind distribution in the manner reasonably requested.

Section 4.5 Registration Expenses.

(a) The Company's Obligation. All expenses incident to the Company's performance of or compliance with this ARTICLE IV (including, without limitation, all registration, qualification and filing fees, including FINRA filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, transfer agent fees and expenses, travel expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters, including, if necessary, a "qualified independent underwriter" (as such term is defined by FINRA) (excluding underwriting discounts and commissions), and other Persons retained by the Company) (all such expenses being herein called "Registration Expenses"), shall be borne by the Company, and the Company shall, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed. Each Person that sells securities pursuant to a Demand Registration, Shelf Offering or Piggyback Registration hereunder shall bear and pay all underwriting discounts and commissions applicable to the securities sold for such Person's account (provided, however, that such underwriting discounts and commissions applicable to Registrable Securities will be the same per share as those applicable to Registrable Securities held be the Demand Holders included in such Demand Registration, Shelf Offering or Piggyback Registration).

(b) Counsel Fees and Disbursements. In connection with each Demand Registration, each Piggyback Registration and each Shelf Offering that is an underwritten offering, the Company shall reimburse the Holders participating in such registration (i) for the reasonable fees and disbursements of one counsel chosen by the Holders holding a majority of the Registrable Securities included in such registration or participating in such Shelf Offering and (ii) for the reasonable fees and disbursements of each additional counsel retained by any holder for the purpose of rendering a legal opinion on behalf of any such holder in connection with any underwritten Demand Registration, Piggyback Registration or Shelf Offering.

(c) Security Holders. To the extent any expenses are not required to be paid by the Company, each holder of securities included in any registration hereunder shall pay those expenses allocable to the registration of such holder's securities so included in proportion to the aggregate selling price of the securities to be so registered.

Section 4.6 Indemnification and Contribution.

(a) By the Company. The Company shall indemnify and hold harmless, to the extent permitted by applicable Law, each Holder, such Holder's officers, directors employees, agents and representatives, and each Person who controls such holder (within the meaning of the Securities Act) (the "Indemnified Parties") against all losses, claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) caused by, resulting from, arising out of, based upon or related to any of the following statements, omissions or violations by the Company: (i) any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus, preliminary prospectus or Free-Writing Prospectus, or any amendment thereof or supplement thereto or (B) any application or other document or communication (in this Section 4.6(a), collectively called an "application") executed by or on behalf of the Company or based upon written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify any securities covered by such registration under the securities laws thereof, (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance. In addition, the Company will reimburse such Indemnified Party for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such losses. Notwithstanding the foregoing, the Company shall not be liable in any such case to the extent that any such losses result from, arise out of, are based upon, or relate to an untrue statement or alleged untrue statement, or omission or alleged omission, made in such registration statement, any such prospectus, preliminary prospectus or Free-Writing Prospectus or any amendment or supplement thereto, or in any application, in reliance upon, and in conformity with, written information prepared and furnished in writing to the Company by such Indemnified Party expressly for use therein or by such Indemnified Party's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Indemnified Party with a sufficient number of copies of the same. In connection with an underwritten offering, the Company shall indemnify such underwriters, their officers and directors, and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Indemnified Parties.

(b) By each Holder. In connection with any registration statement in which a Holder is participating, each such Holder shall furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, shall indemnify the Company, its officers, directors, employees, agents and representatives, and each Person who controls the Company (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses resulting from any untrue or alleged untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such Holder expressly for use in such registration statement; provided, however, that the obligation to indemnify shall be individual, not joint and several, for each Holder and shall be limited to the net amount of proceeds received by such Holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Claim Procedure. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided, however, that the failure to give prompt notice shall impair any Person's right to indemnification hereunder only to the extent such failure has prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. In such instance, the conflicted indemnified parties shall have a right to retain one separate counsel, chosen by the Holders holding a majority of the Registrable Securities included in the registration if such Holders are indemnified parties, at the expense of the indemnifying party.

(d) Contribution. If the indemnification provided for in this Section 4.6(a) or (b) is held by a court of competent jurisdiction to be unavailable to, or is insufficient to hold harmless, an indemnified party or is otherwise unenforceable with respect to any loss, claim, damage, liability or action referred to herein, then the indemnifying party shall contribute to the amounts paid or payable by such indemnified party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such loss, claim, damage, liability or action as well as any other relevant equitable considerations; provided, however, that the maximum amount of liability in respect of such contribution shall be limited, in the case of each seller of Registrable Securities, to an amount equal to the net proceeds actually received by such seller from the sale of Registrable Securities effected pursuant to such registration. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if the contribution pursuant to this Section 4.6(d) were to be determined by *pro rata* allocation or by any other method of allocation that does not take into account such equitable considerations. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses referred to herein shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Release. No indemnifying party shall, except with the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(f) Non-exclusive Remedy; Survival. The indemnification and contribution provided for under this Section 4.6 shall be in addition to any other rights to indemnification or contribution that any indemnified party may have pursuant to Law or contract and shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director

or controlling Person of such indemnified party and shall survive the transfer of Registrable Securities and the termination or expiration of this Agreement.

Section 4.7 Underwritten Offerings. No Person may participate in any registration hereunder which is underwritten unless such Person: (a) agrees to sell the same class and type of securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements (including, without limitation, pursuant to any over-allotment or "green shoe" option requested by the underwriters; provided, however, that no Holder shall be required to sell more than the number of Registrable Securities such Holder has requested to include); (b) completes and executes all questionnaires, indemnities, underwriting agreements and other documents reasonably required of all holders of securities being included in such registration under the terms of such underwriting arrangements; and (c) completes and executes all powers of attorney and custody agreements as reasonably requested by the managing underwriters; provided, however, that no Holder included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such holder and such holder's intended method of distribution) or to undertake any indemnification obligations to the Company or the underwriters with respect thereto that are materially more burdensome than those provided in Section 4.6 or those provided by the other Holders participating in such underwritten registration. For the avoidance of doubt, each Holder shall execute such customary powers of attorney or custody agreements as are requested by the managing underwriters, appointing as power of attorney or custodian such persons as reasonably requested by the Holders holding the majority of the Registrable Securities. Each Holder shall execute and deliver such other agreements as may be reasonably requested by the Company and the lead managing underwriter(s) that are consistent with such Holder's obligations under Section 4.3, Section 4.4 and this Section 4.7 or that are necessary to give further effect thereto. To the extent that any such agreement is entered into pursuant to, and consistent with, Section 4.3 and this Section 4.7, the respective rights and obligations created under such agreement shall supersede the respective rights and obligations of the Holders, the Company and the underwriters created pursuant to this Section 4.7. In the case of any registration hereunder that is underwritten which is requested by the Demand Holders, the price, underwriting discount and other financial terms of the related underwriting agreement for such securities shall be determined by the Holders holding a majority of the Registrable Securities requesting such underwritten offering, provided, however, that such price, underwriting discount and other financial terms shall be applicable *pari passu* among all Registrable Securities included in such registration on a *pro rata* basis.

Section 4.8 Additional Parties; Joinder. Subject to the prior written consent of the Holders holding a majority of the Registrable Securities and except as provided in Section 5.1(b), the Company may permit any Person who acquires shares of Common Stock or rights to acquire shares of Common Stock from the Company after the date hereof to become a party to this Agreement and to succeed to all of the rights and obligations of a "Holder" under this Agreement by obtaining an executed joinder to this Agreement from such Person in the form of Exhibit B (a "Joinder"). Upon the execution and delivery of a Joinder by such Person, the shares of Common Stock acquired by such Person (the "Acquired Common") shall be Registrable Securities hereunder, such Person shall be a "Holder" under this Agreement with respect to the Acquired Common, and the Company shall add such Person's name and address to the appropriate schedule hereto and circulate such information to the parties to this Agreement.

Section 4.9 Current Public Information. The Company shall file all reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as any holder or Holders may reasonably request, all to the extent required to enable such Holders to sell Registrable Securities pursuant to Rule 144. Upon request, the Company shall deliver to any Holder a written statement as to whether it has complied with such requirements.

Section 4.10 Subsidiary Public Offering. If, after an initial Public Offering of the Equity Interests of one of its Subsidiaries, the Company distributes securities of such Subsidiary to its equity holders, then the rights and obligations of the Company pursuant to this Agreement shall apply, *mutatis mutandis*, to such Subsidiary, and the Company shall cause such Subsidiary to comply with such Subsidiary's obligations under this Agreement.

ARTICLE V
MISCELLANEOUS, DEFINITIONS

Section 5.1 Assignment; Benefit of Parties.

(a) Subject to Section 5.1(b) and Section 5.1(c), this Agreement shall not be assignable or otherwise transferable by any Party without the prior written consent of the other Parties, and any purported assignment or other transfer without such consent shall be null and void. Nothing herein contained shall confer or is intended to confer on any third party or entity that is not a party to this Agreement any rights under this Agreement.

(b) The rights to cause the Company to register Registrable Securities under ARTICLE IV may be transferred or assigned by each Holder to one or more transferees or assignees of Registrable Securities; provided, however, that any such transferee or assignee is an Affiliate of, and after such transfer or assignment continues to be an Affiliate of, such Holder and that each such transferee or assignee assumes in writing responsibility for its portion of the obligations of such transferring Holder under ARTICLE IV.

(c) So long as ECP and its Affiliates are the beneficial owners of a majority of the NESCO Holder Shares, at the written request of ECP, the NESCO Holder shall assign to ECP (or to an Affiliate of ECP designated in writing by it), without any further consent required from any other Party, all of its rights hereunder and, following such assignment, ECP (or an Affiliate designated in writing by it) shall be deemed to be the "NESCO Holder" for all purposes hereunder; provided, however, that ECP (or its Affiliate designated in writing) assumes in writing responsibility for its portion of the obligations of the NESCO Holder and that, if ECP designates an Affiliate in writing, then such Affiliate shall continue to be an Affiliate of ECP at all times.

Section 5.2 Remedies. The Parties shall be entitled to enforce their rights under this Agreement specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The Parties agree and acknowledge that a breach of this Agreement would cause irreparable harm and money damages would not be an adequate remedy for any such breach and that, in addition to other rights and remedies hereunder, the Parties shall be entitled to specific performance and/or injunctive or other equitable relief (without posting a bond or other security) from any court of Law or equity of competent jurisdiction in order to enforce or prevent any violation of the provisions of this Agreement.

Section 5.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic mail as of the date so transmitted (or, if transmitted after normal business hours, on the next Business Day at the local time of the recipient), (c) the third Business Day following the day sent by reputable national overnight courier (with written confirmation of receipt), or (d) the seventh Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties hereto at the address set forth below, or at such other address as such party may specify by written notice to the other party hereto:

(a) If to the Company or the Management Holders:

Custom Truck One Source, Inc.
6714 Pointe Inverness Way, Suite 220
Fort Wayne, Indiana 46804
Attention: Joshua A. Boone
E-mail: josh.boone@nescorentals.com

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

Latham & Watkins LLP
555 11th Street, N.W., Suite 1000
Washington D.C. 20004
Attn: Paul Sheridan
David Brown
Email: Paul.Sheridan@lw.com
David.Brown@lw.com

(b) If to the NESCO Holder or ECP:

Energy Capital Partners III, LLC
12680 High Bluff Drive, Suite 400
San Diego, California 92130
Attention: Rahman D'Argenio
Chris Leininger
Email: rdargenio@ecpartners.com
cleininger@ecpartners.com

(c) If to the Sponsors:

Capitol Investment Corp. IV
1300 17th Street North, Suite 820
Arlington, Virginia 22209
Attn: Mark D. Ein, Chairman & CEO, and
Dyson Dryden, President & CFO
E-mail: mark@capinvestment.com
dyson@capinvestment.com

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

Latham & Watkins LLP
555 11th Street, N.W., Suite 1000
Washington D.C. 20004
Attn: Paul Sheridan
David Brown
Email: Paul.Sheridan@lw.com
David.Brown@lw.com

(d) If to Platinum:

Platinum Once Source Holdings, LLC
c/o Platinum Equity Advisors, LLC
1 Greenwich Office Park
North Building, Floor 2
Greenwich, CT 06831
Email: LSamson@platinumequity.com
Attn: Louis Samson

and

c/o Platinum Equity Advisors, LLC
360 North Crescent Drive, South Building
Beverly Hills, CA 90210
Attn: John Holland
Email: jholland@platinumequity.com

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

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
E-mail Address: ken.lefkowitz@hugheshubbard.com
Attention: Kenneth A. Lefkowitz

(e) If to Blackstone:

345 Park Avenue, 43rd Floor
New York, New York 10154
Attn: JP Munfa; Gregory Perez
Email: jp.munfa@blackstone.com
Gregory.perez@blackstone.com

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

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attention: Rhett A. Van Syoc, P.C.
Cyril V. Jones
E-mail: rhett.vansyoc@kirkland.com
cyril.jones@kirkland.com

Section 5.4 Adjustments. If, and as often as, there are any changes in the Common Stock by way of stock split, stock dividend, combination or reclassification, or through merger, consolidation, reorganization, recapitalization or sale, or by any other means, appropriate adjustment shall be made in the provisions of this Agreement, as may be required, so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Common Stock as so changed.

Section 5.5 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

Section 5.6 Further Assurances. In order to effectuate the provisions of this Agreement, each Stockholder hereby agrees to take, in its capacity as a stockholder of the Company, all actions reasonably necessary to give effect to the provisions of this Agreement (such actions, "Necessary Action"), including, without limitation, (a) when any action or vote is required to be taken by such Stockholder pursuant to this Agreement, using its commercially reasonable efforts to call, or cause the appropriate officers and Directors of the Company to call, one or more meetings of the Company's stockholders, to take such action or vote, (b) to attend all meetings of the Company's stockholders in person or by proxy for purposes of obtaining a quorum that are called for the election of Directors of the Company or for the purpose of taking any action required by this Agreement, (c) to vote or cause to be voted all Equity Interests over which such Stockholder has voting power at meetings of the Company's stockholders or in actions of the Company's stockholders by written consent so as to effectuate the provisions of this Agreement and, (d) in the case of a Stockholder that has nominated a Director pursuant to Section 1.1, to use its reasonable best efforts to cause the Board to adopt, either at a meeting of the Board or by unanimous written consent of the Board, all the resolutions necessary to effectuate the provisions of this Agreement, including causing members of the Board to be removed in accordance with the provisions of this Agreement.

Section 5.7 Counterparts. This Agreement may be executed in one or more counterparts, and may be delivered by means of facsimile or electronic transmission in portable document format, each of which shall be deemed to be an original and shall be binding upon the Party who executed the same, but all of such counterparts shall constitute the same agreement.

Section 5.8 Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction.

Section 5.9 Jurisdiction; WAIVER OF TRIAL BY JURY. Any Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby may be brought in federal and state courts located in the State of Delaware, and each of the Parties

irrevocably submits to the exclusive jurisdiction of each such court in any such Action, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the Action shall be heard and determined only in any such court, and agrees not to bring any Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any Party to serve process in any manner permitted by Law or to commence legal proceedings or otherwise proceed against any other Party in any other jurisdiction, in each case, to enforce judgments obtained in any Action brought pursuant to this Section 5.9. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 5.10 Indemnification.

(a) The Company agrees to indemnify and hold harmless each of Platinum, ECP, Capitol, Blackstone and their respective directors, officers, partners, members, direct and indirect owners, managers, Affiliates and controlling persons (each, an "Stockholder Indemnitee") from and against any and all liability, including, without limitation, all obligations, costs, fines, claims, actions, injuries, demands, suits, judgments, proceedings, investigations, arbitrations (including stockholder claims, actions, injuries, demands, suits, judgments, proceedings, investigations or arbitrations) and reasonable expenses, including reasonable accountant's and reasonable attorney's fees and expenses (together the "Losses"), incurred by such Stockholder Indemnitee before or after the Effective Time to the extent arising out of, resulting from, or relating to (i) such Stockholder Indemnitee's purchase and/or ownership of any Equity Interests or (ii) any litigation to which any Stockholder Indemnitee is made a party in its capacity as a stockholder or owner of securities (or as a director, officer, partner, member, manager, Affiliate or controlling person of any of Platinum, ECP, Capitol or Blackstone, as the case may be) of the Company; provided, however, that the foregoing indemnification rights in this Section 5.10(a) shall not be available to the extent that (i) any such Losses are incurred as a result of such Stockholder Indemnitee's willful misconduct or gross negligence; (ii) any such Losses are incurred as a result of non-compliance by such Stockholder Indemnitee with any laws or regulations applicable to any of them; or (iii) subject to the rights of contribution provided for below, to the extent indemnification for any Losses would violate any applicable Law or public policy. For purposes of this Section 5.10(a), none of the circumstances described in the limitations contained in the proviso in the immediately preceding sentence shall be deemed to apply absent a final non-appealable judgment of a court of competent jurisdiction to such effect, in which case to the extent any such limitation is so determined to apply to any Stockholder Indemnitee as to any previously advanced indemnity payments made by the Company under this Section 5.10(a), then such payments shall be promptly repaid by such Stockholder Indemnitee to the Company. The rights of any Stockholder Indemnitee to indemnification hereunder will be in addition to any other rights any such party may have under any other agreement or instrument to which such Stockholder Indemnitee is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation. In the event of any payment of indemnification pursuant to this Section 5.10(a), to the extent that any Stockholder Indemnitee is indemnified for Losses, the Company will be subrogated to the extent of such payment to all of the related rights of recovery of the Stockholder Indemnitee to which such payment is made against all other Persons. Such Stockholder Indemnitee shall execute all papers reasonably required to evidence such rights. The Company will be entitled at its election to participate in the defense of any third party claim upon which indemnification is due pursuant to this Section 5.10(a) or to assume the defense thereof, with counsel reasonably satisfactory to such Stockholder Indemnitee unless, in the reasonable judgment of the Stockholder Indemnitee, a conflict of interest between the Company and such Stockholder Indemnitee may exist, in which case such Stockholder Indemnitee shall have the right to assume its own defense and the Company shall be liable for all reasonable expenses therefor. Except as set forth above, should the Company assume such defense all further defense costs of the Stockholder Indemnitee in respect of such third party claim shall be for the sole account of such party and not subject to indemnification hereunder. The Company will not without the prior written consent of the Stockholder Indemnitee (which consent shall not be unreasonably withheld) effect any settlement of any threatened or pending third party claim in which such Stockholder Indemnitee is or could have been a party and be entitled to indemnification hereunder unless such settlement solely involves the payment of money and includes an unconditional release of such Stockholder Indemnitee from all liability and claims that are the subject matter of such claim. If the indemnification provided for above is unavailable in respect of any Losses, then the Company, in lieu of indemnifying a Stockholder Indemnitee, shall, if and to the extent permitted by Law, contribute to the amount paid or payable by such Stockholder Indemnitee in such proportion as is appropriate to reflect the relative fault of the Company and such Stockholder Indemnitee in connection with the actions which resulted in such Losses, as well as any other equitable considerations.

(b) The Company agrees to pay or reimburse each Stockholder for all reasonable, out-of-pocket costs and expenses of such Stockholder (including reasonable attorneys' fees, charges, disbursement and expenses) incurred in connection with the enforcement or exercise by such Stockholder of any right granted to it or provided for hereunder.

Section 5.11 Entire Agreement. This Agreement and the agreements referenced herein constitute the entire agreement among the Parties relating to the transactions contemplated hereby and supersede any other agreements, whether written or oral, that may have been made or entered into by or among any of the Parties or any of their respective Subsidiaries relating to the transactions contemplated hereby.

Section 5.12 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The Parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement or the applicable rules and regulations of the Approved Stock Exchange, the remaining provisions of this Agreement shall be reformed, construed and enforced to the fullest extent permitted by Law or the applicable rules and regulations of the Approved Stock Exchange and to the extent necessary to give effect to the intent of the Parties, and the Parties shall take all actions reasonably necessary to cause such reformation, construction or enforcement.

Section 5.13 Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Parties unless such modification is approved in writing by the Parties. The failure of any Party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such Party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 5.14 Termination. This Agreement shall expire and terminate automatically at such time as none of Platinum, Blackstone, ECP or Capitol has the right to nominate a nominee pursuant to Section 1.1(a); provided, however, this Agreement shall expire and terminate automatically with respect to each of Platinum, Blackstone, ECP or Capitol, as applicable, at such time as such Party no longer Beneficially Owns any shares of Common Stock; provided, further, however, that Section 1.1(h), Section 1.1(j), Section 2.1, Section 2.2, Section 4.6 and ARTICLE V shall survive the termination of this Agreement (whether in whole or with respect to any particular Party).

Section 5.15 Enforcement. Each of the Parties covenant and agree that the disinterested Directors have the right to enforce, waive or take any other action with respect to this Agreement on behalf of the Company.

Section 5.16 Definitions.

"Action" means any action, claim, demand, litigation, suit, counter suit, civil charge, criminal proceeding, complaint, dispute, examination, injunction, hearing, investigation, inquiry, audit, settlement, mediation, arbitration or other legal or administrative proceeding of any sort by or before any Governmental Authority.

"Affiliate" means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise. "Affiliates" with respect to Platinum, Blackstone, ECP and Capitol, respectively, shall not include the Company or its Subsidiaries.

"Annual Meeting" means any meeting of the stockholders of the Company held for the purpose of electing the Directors of the Company.

"Approved Stock Exchange" means the Nasdaq, the New York Stock Exchange or any other national securities exchange on which any of the Common Stock of the Company is listed.

"Beneficially Own" (including its correlative meanings, "Beneficial Owner" and "Beneficial Ownership") has the meaning ascribed to it in Section 13(d) of the Exchange Act; provided, however, that a Person shall not be deemed to have Beneficial Ownership of an Equity Interest (including Common Stock) unless it has the pecuniary interest in such Equity Interest.

"Blackstone Director" means the individual elected to the Board that has been nominated by Blackstone pursuant to this Agreement.

"Blackstone Registrable Securities" means the Registrable Securities held by Blackstone and its Affiliates and any Person to whom it transfers or assigns its rights hereunder in accordance with Section 5.1(b).

"Board" means the board of directors of the Company.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, are authorized or required by Law to close.

"Capitol Director" means the individual elected to the Board that has been nominated by Capitol pursuant to this Agreement.

"Chairperson" means the chairperson of the Board.

"Change in Control" means the occurrence of the following event: any one Person (other than Platinum and its Affiliates), or more than one Person that are Affiliates or that are acting as a group (excluding Platinum and its Affiliates), acquiring ownership of Equity Interests of the Company which, together with the Equity Interests held by such Person, such Person and its Affiliates or such group, constitutes more than 50% of the total voting power or economic rights of the Equity Interests of the Company; provided, however, that to the extent such Person(s) acquire(s) ownership of more than 50% of the total voting power or economic rights of the Equity Interests of the Company through one or more transactions, the "price per share" paid or payable to the stockholders of the Company for purposes of Section 2.1(d) and Section 2.2(c) shall be the last price per share paid by such Person(s) in connection with all such transactions.

"Change in Control Consideration" means the amount per share to be received by a holder of shares of Common Stock in connection with a Change in Control, with any non-cash consideration valued as determined by the value ascribed to such consideration by the parties to such transaction.

"Common Stock Price" means, on any date after the Effective Time, the closing sale price per share of Common Stock reported as of 4:00 p.m., New York, New York time on such date by Bloomberg, or if not available on Bloomberg, as reported by Morningstar.

"Director" means a member of the Board until such individual's death, disability, disqualification, resignation or removal.

"ECP Director" means the individual elected to the Board that has been nominated by ECP pursuant to this Agreement.

"ECP Registrable Securities" means the Registrable Securities held by ECP and any Affiliate of ECP to whom ECP transfers or assigns its rights hereunder in accordance with Section 5.1(b).

"Equity Interests" means, with respect to any Person, any and all shares, interests, participations, or other equivalents, including membership interests (however designated, whether voting or nonvoting or certificated or noncertificated), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and 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 property of, such partnership, including all securities convertible or exchangeable for such equity and all options, warrants and other rights to purchase or otherwise acquire such equity.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

"FINRA" means the Financial Industry Regulatory Authority.

"Free-Writing Prospectus" means a free-writing prospectus, as defined in Rule 405.

"Governmental Authority" means any federal, state, provincial, municipal, local or foreign government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court or tribunal.

"Governmental Order" means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority.

"Holder" means a Stockholder that holds Registrable Securities.

"Law" means any statute, law, ordinance, rule, regulation or Governmental Order, in each case, of any Governmental Authority.

"Maximum Target NESCO Holder Earnout Shares" means, with respect to NESCO Holder, 1,651,798 shares of NESCO Holder Earnout Shares.

"Maximum Target Sponsor Earnout Shares" means, with respect to each Sponsor, the shares of Common Stock noted as Maximum Target Sponsor Earnout Shares set forth next to such Sponsor's name on Exhibit A.

"Merger Effective Time" means July 31, 2019.

"Minimum Target NESCO Holder Earnout Shares" means, with respect to NESCO Holder, 900,000 shares of NESCO Holder Earnout Shares.

"Minimum Target Sponsor Earnout Shares" means, with respect to each Sponsor, the shares of Common Stock noted as Minimum Target Sponsor Earnout Shares set forth next to such Sponsor's name on Exhibit A.

"NESCO Holder Earnout Shares" means the Earnout Shares issued pursuant to Section 2.06(g) of the Merger Agreement.

"NESCO Holder Shares" means any shares of Common Stock held by the NESCO Holder.

"Non-Fully Diluted Basis" means all shares of Common Stock issued and outstanding, excluding the Sponsor Earnout Shares to the extent such Sponsor Earnout Shares remain subject to forfeiture pursuant to Section 2.1.

"Other Holders" means any Person that has become bound by the provisions of Article IV by executing a Joinder.

"Permitted Transferee" means, with respect to any Person, (i) the direct or indirect partners, members, equity holders or other Affiliates of such Person, or (ii) any of such Person's related investment funds or vehicles controlled or managed by such Person or Affiliate of such Person.

"Person" means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, governmental agency or instrumentality or other entity of any kind.

"Platinum Director" means an individual elected to the Board that has been nominated by Platinum pursuant to this Agreement or otherwise in accordance with the Bylaws.

"Platinum Director Nomination Threshold" means that Platinum, together with its Affiliates, Beneficially Owns a number of shares of Common Stock that is equal to or greater than 50% of the total number of shares of Common Stock issued and outstanding (on a Non-Fully Diluted Basis).

"Platinum Ownership Threshold" means that Platinum, together with its Affiliates, Beneficially Owns a number of shares of Common Stock that is (a) equal to or greater than 30% of the total number of shares of Common Stock issued and outstanding and (b) greater than the number of shares of Common Stock owned by any other Person or group of Affiliated Persons (in each of cases (a) and (b) of this sentence, on a Non-Fully Diluted Basis).

"Platinum Registrable Securities" means the Registrable Securities held by a Platinum, its Affiliates and any Person to whom it transfers or assigns its rights hereunder in accordance with Section 5.1(b).

"Public Offering" means any sale or distribution by the Company and/or Holders to the public of shares of Common Stock pursuant to an offering registered under the Securities Act.

"Registrable Securities" means (a) any shares of Common Stock held by a Demand Holder or any Other Holder (including, for the avoidance of doubt, any Earnout Shares (as defined in the Merger Agreement) and Sponsor Earnout Shares), in each case, upon the issuance thereof or lapse of transfer restrictions applicable thereto), (b) any Warrants issued to or held by ECP, any Sponsor or any Other Holder or any shares of Common Stock issued or issuable upon exercise thereof, and (c) any Equity Interests of the Company or any Subsidiary of the Company issued or issuable with respect to the securities referred to in clause (a) or (b) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when they have been (i) sold or distributed pursuant to a Public Offering, (ii) sold in compliance with Rule 144 or (iii) repurchased by the Company or a Subsidiary of the Company. For purposes of this Agreement, a Person shall be deemed to be a Holder and the Registrable Securities shall be deemed to be in existence, in each case, whenever such Person has the right to acquire, directly or indirectly, such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected, and such Person shall be entitled to exercise the rights of a Holder hereunder. Notwithstanding anything to the contrary in this Agreement, the Sponsor Earnout Shares shall not be deemed Registrable Securities unless and until the restrictions set forth in this Agreement shall have ceased to apply in accordance with the terms thereof.

"Rule 144," "Rule 158," "Rule 405," "Rule 415" and "Rule 430B" mean, in each case, such rule promulgated under the Securities Act (or any successor provision) by the SEC, as the same shall be amended from time to time, or any successor rule then in force.

"SEC" means the United States Securities and Exchange Commission.

"Second Target NESCO Holder Earnout Shares" means, with respect to NESCO Holder, 900,000 shares of NESCO Holder Earnout Shares.

"Second Target Sponsor Earnout Shares" means, with respect to each Sponsor, the shares of Common Stock noted as Second Target Sponsor Earnout Shares set forth next to such Sponsor's name on Exhibit A.

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

"Sponsor Earnout Shares" means, collectively, the Minimum Target Sponsor Earnout Shares, the Second Target Sponsor Earnout Shares and the Maximum Target Sponsor Earnout Shares.

"Sponsor Registrable Securities" means the Registrable Securities held by a Sponsor, its Affiliates and any Person to whom it transfers or assigns its rights hereunder in accordance with Section 5.1(b).

"Stockholder" means any holder of Common Stock that is or becomes a party to this Agreement from time to time in accordance with the provisions hereof.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, joint venture or other legal entity of any kind of which such Person (either alone or through or together with one or more of its other Subsidiaries), owns, directly or indirectly, more than 50% of the Equity Interests the holders of which are (a) generally entitled to vote for the election of the board of directors or other governing body of such legal entity or (b) generally entitled to share in the profits or capital of such legal entity.

"Transfer" means any (a) sale, transfer, assignment, hypothecation, pledge, encumbrance or other disposition of (whether with or without consideration and whether voluntary or involuntary or by operation of Law) of Common Stock, (b) hedge,

swap, forward contract or other similar transaction that is designed to or which would reasonably be expected to lead to or result in a sale or disposition of Beneficial Ownership of, or pecuniary interest in, Common Stock or (c) sale of, or trade in, derivative securities representing the right to vote or economic benefits of Common Stock.. "Transferable" and "Transferee" shall each have a correlative meaning.

"Vote" with respect to any Director, shall mean the vote of such Director when voting for or against the passing of any resolutions of the Board or any committee thereof and in respect of any determination of quorum present with respect to any matter.

"Voting Securities" shall mean, at any time of determination, shares of any class of Equity Interests of the Company that are then entitled to vote generally in the election of Directors.

"Warrants" means the Company's warrants, each exercisable for one share of Common Stock.

"WKSI" means a "well-known seasoned issuer" as defined under Rule 405.

Other defined terms:

Acquired Common	4.8
Agreement	Preamble
Automatic Shelf Registration Statement	4.1(a)
Blackstone	Preamble
Common Stock	Recitals
Company	Preamble
CTOS	Recitals
Demand Holders	4.1(a)
Demand Registrations	4.1(a)
Drag Shares	3.3(a)
ECP	Preamble
Effective Time	Preamble
Election Support Efforts	Section 1.1(c)
End of Suspension Notice	4.1(f)(iii)
Holdback Period	4.3(a)
Indemnified Parties	4.6(a)
Joinder	4.8
Lockup Period	3.1(a)
Long-Form Registrations	4.1(a)
Losses	5.10(a)
Management Holder	Preamble
Management Holders	Preamble
Maximum Target	2.1(c)
Merger Agreement	Recitals
Minimum Target	2.1(c)
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Operating Council	1.3
Participating Stockholder	3.1(b)
Parties	Preamble
Party	Preamble
Piggyback Registration	4.2(a)

Platinum	Preamble
Prior Agreements	Recitals
Qualifying Stockholder	3.1(a)
Registration Expenses	4.5(a)
Registration Lockup Period	4.1(a)
Required Sale	3.3(a)
Required Sale Notice	3.3(a)
Sale Proposal	3.3(a)
Sale Transaction	4.3(a)
Second Target	2.1(c)
Securities	4.3(a)
Shelf Offering	4.1(d)
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Shelf Registrable Securities	4.1(d)
Shelf Registration	4.1(a)
Shelf Registration Statement	4.1(d)
Short-Form Registrations	4.1(a)
Sponsors	Preamble
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Suspension Event	4.1(f)(iii)
Suspension Notice	4.1(f)(iii)
Suspension Period	4.1(f)(ii)
Trigger Notice	3.1(b)
Trigger Price	3.1(a)
Trigger Transfer	3.1(b)

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Time.

Company:

CUSTOM TRUCK ONE SOURCE, INC.

By: /s/ Joshua Boone
Name: Joshua Boone
Title: Chief Financial Officer

[Signature page to Stockholders' Agreement]

NESCO Holder:

NESCO HOLDINGS, LP

By: NESCO Holdings GP, LLC
Its: General Partner

By: /s/ Rahman D'Argenio

Name: Rahman D'Argenio
Title: President

[Signature page to Stockholders' Agreement]

ECP:

ENERGY CAPITAL PARTNERS III, LP

By: Energy Capital Partners GP III, LP
Its: General Partner

By: Energy Capital Partners III, LLC
Its: General Partner

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

ENERGY CAPITAL PARTNERS III-A, LP

By: Energy Capital Partners GP III, LP
Its: General Partner

By: Energy Capital Partners III, LLC
Its: General Partner

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

[Signature page to Stockholders' Agreement]

ENERGY CAPITAL PARTNERS III-B, LP

By: Energy Capital Partners GP III, LP
Its: General Partner

By: Energy Capital Partners III, LLC
Its: General Partner

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

ENERGY CAPITAL PARTNERS III-C, LP

By: Energy Capital Partners GP III, LP
Its: General Partner

By: Energy Capital Partners III, LLC
Its: General Partner

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

[Signature page to Stockholders' Agreement]

ENERGY CAPITAL PARTNERS III-D, LP

By: Energy Capital Partners GP III, LP
Its: General Partner

By: Energy Capital Partners III, LLC
Its: General Partner

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

ENERGY CAPITAL PARTNERS III (NESCO CO-INVEST), LP

By: Energy Capital Partners GP III Co-Investment (NESCO), LLC
Its: General Partner

By: Energy Capital Partners III, LLC
Its: Managing Member

By: ECP ControlCo, LLC
Its: Managing Member

By: /s/ Rahman D'Argenio
Name: Rahman D'Argenio
Title: Managing Member

Sponsors:

CAPITOL ACQUISITION MANAGEMENT IV LLC

By: /s/ Mark Ein
Name: Mark Ein
Title: CEO

CAPITOL ACQUISITION FOUNDER IV LLC

By: /s/ Dyson Dryden
Name: Dyson Dryden
Title: CFO

By: /s/ Lawrence Calcano
Name: Lawrence Calcano

By: /s/ Brooke Coburn
Name: Brooke Coburn

By: /s/ Richard Donaldson
Name: Richard Donaldson

By: /s/ Preston Parnell
Name: Preston Parnell

By: /s/ Winston Lin
Name: Winston Lin

Blackstone:

BLACKSTONE CAPITAL PARTNERS VI-NQ L.P.

By: Blackstone Management Associates VI-NQ L.L.C., its general partner

By: BMA VI-NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BLACKSTONE FAMILY INVESTMENT PARTNERSHIP VI-NQ ESC L.P.

By: BCP VI-NQ Side-By-Side BP L.L.C., its general partner

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BLACKSTONE ENERGY PARTNERS NQ L.P.

By: Blackstone Energy Management Associates NQ L.L.C., its general partner

By: Blackstone EMA NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

[Signature page to Stockholders' Agreement]

BLACKSTONE ENERGY FAMILY INVESTMENT PARTNERSHIP NQ ESC L.P.

By: BEP Side-By-Side GP NQ L.L.C., its general partner

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BLACKSTONE MANAGEMENT ASSOCIATES VI-NQ L.L.C.

By: BMA VI-NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BLACKSTONE ENERGY MANAGEMENT ASSOCIATES NQ L.L.C.

By: Blackstone EMA NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BCP CTOS HOLDINGS L.P.

By: Blackstone Management Associates VI-NQ L.L.C., its general partner

By: BMA VI-NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

[Signature page to Stockholders' Agreement]

BEP CTOS HOLDINGS L.P.

By: Blackstone Energy Management Associates NQ L.L.C., its general partner

By: Blackstone EMA NQ L.L.C., its sole member

By: /s/ John-Paul Munfa
Name: John-Paul Munfa
Title: Senior Managing Director

BLACKSTONE ENERGY FAMILY INVESTMENT PARTNERSHIP SMD L.P.

By: Blackstone Family GP L.L.C., its general partner

By: /s/ Christopher Straino
Name: Christopher Striano
Title: Senior Managing Director – Principal Accounting Officer

[Signature page to Stockholders' Agreement]

Platinum:

PE ONE SOURCE HOLDINGS, LLC

By: **/s/** Mary Ann Sigler
Name: Mary Ann Sigler
Title: Manager

[Signature page to Stockholders' Agreement]

Management Holders:

FREDERICK M. ROSS, JR. HOLDING COMPANY, LLC

/s/ Frederick M. Ross, Jr.

Name: Frederick M. Ross, Jr.
Title: Manager

[Signature page to Stockholders' Agreement]

EXHIBIT A

Sponsor	Minimum Target Sponsor Earnout Shares	Second Target Sponsor Earnout Shares	Maximum Target Sponsor Earnout Shares
Capitol Acquisition Management IV LLC c/o Mark D. Ein Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	916,405	916,405	227,924
Capitol Acquisition Founder IV LLC c/o L. Dyson Dryden Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	458,202	458,202	113,963
Richard C. Donaldson Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	6,957	6,957	1,730
Brooke B. Coburn Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	6,957	6,957	1,730
Lawrence Calcano Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	6,957	6,957	1,730
Preston Parnell Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	3,826	3,826	952
Winston Lin Capitol Investment Corp. IV 1300 17th Street North, Suite 820 Arlington, Virginia, 22209	696	696	173

Total	1,400,000	1,400,000	348,202

EXHIBIT B

REGISTRATION RIGHTS JOINDER

The undersigned is executing and delivering this Joinder pursuant to the Stockholders' Agreement dated as of [ ], 2021 (as the same may hereafter be amended, the "Stockholders' Agreement"), among Custom Truck One Source, Inc., a Delaware corporation (the "Company"), and the other person named as parties therein.

By executing and delivering this Joinder to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of Article IV of the Stockholders' Agreement and all other provisions thereof necessary to give effect to such Article IV as a Holder in the same manner as if the undersigned were an original signatory to the Stockholders' Agreement, and the undersigned's [number] shares of Common Stock shall be included as Registrable Securities under the Stockholders' Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the ____day of_____, _____.

_____
Signature of Stockholder

_____
Print Name of Stockholder

Address: _____

_____

_____

Agreed and Accepted as of

_____

CUSTOM TRUCK ONE SOURCE, INC.

By: _____
Its: _____

Exhibit 10.6

Execution Version

CORPORATE ADVISORY SERVICES AGREEMENT

This CORPORATE ADVISORY SERVICES AGREEMENT (this "Agreement") is entered into as of April 1, 2021 by and between Custom Truck One Source, Inc., a Delaware corporation f/k/a Nesco Holdings, Inc. (the "Company") and Platinum Equity Advisors, LLC ("Platinum"), a Delaware limited liability company ("Advisor").

RECITALS

A. The Company specializes in providing a full-suite of specialty equipment services to the electric utility, telecom and rail infrastructure end-markets (collectively, the "Business").

B. Advisor will perform certain services with respect to the Business, and, in exchange for such services, the Company agrees to pay Advisor certain fees and to provide for other consideration, all as set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Appointment. The Company, on behalf of itself and its subsidiaries (collectively, the "Group"), hereby retains Advisor to render certain transactional and corporate advisory services as the Company and Advisor may mutually agree from time to time (collectively, the "Services").

2. Term and Termination.

(a) Term. This Agreement shall begin immediately upon Closing (the date of Closing, the "Effective Date") and shall continue until terminated in accordance with Section 2(b). This Agreement may only be terminated in accordance with this Section 2(b).

(b) Termination. This Agreement may be terminated at any time (i) by mutual written consent of the parties hereto; (ii) by Advisor, upon ninety (90) days' prior written notice to the Company; (iii) by the Company, following a material breach of the terms hereof by Advisor, and Advisor having failed to cure such material breach within thirty (30) days following receipt by it of written notice of such breach; and (iv) automatically 45 days following the earlier of (x) the date that affiliates of Platinum own, in the aggregate, less than 30% of outstanding Shares and (y) the date that any Person or group (other than affiliates of Platinum) owns a number of outstanding Shares that is greater than the number of outstanding Shares owned, in the aggregate, by affiliates of Platinum. Upon termination of this Agreement, the Company shall pay to Advisor, if applicable, all accrued and unpaid Advisory Fees (pursuant to this Agreement) and all unpaid Out-of-Pocket Expenses (pursuant to Section 5(b)) due with respect to the period prior to the date of termination. The obligations of the Company to pay any and all accrued and unpaid obligations under this Section 2(b) shall survive any termination of this Agreement.

(c) For the purposes of this Agreement, the following terms shall have the following meanings:

"Affiliate" means with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or entity, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a person or entity whether through the ownership of voting securities, contract or otherwise.

"Board" means the board of directors of the Company.

"Closing" shall have the meaning ascribed to it in that certain Common Stock Purchase Agreement, dated as of the date hereof by and between the Company and PE One Source Holdings, Inc., as amended, restated, supplemented or otherwise modified from time to time,

"Independent Director" shall have the meaning ascribed to it in the NYSE listing rules.

"Shares" means shares of the Company's common stock.

3. Scope of Work. The Services will be performed for the Group. The Company shall be responsible for all amounts due hereunder. Advisor and the Board shall meet and confer from time to time regarding the Services contemplated hereby; provided, however, that no minimum number of hours is required to be devoted by Advisor. The Company acknowledges that (x) Advisor's services are not exclusive to the Company and (y) Advisor may render similar services to other persons and entities. No Services provided hereunder constitute or shall be construed as investment advice or a recommendation to proceed or not to proceed with any particular action, including any proposed investment or acquisition by the Company or any Group member. The performance of the Services shall not create a fiduciary relationship between Advisor on one hand, and members of the Group, on the other. The Company, on behalf of itself and of each Group member, acknowledges and agrees that, in the course of providing the Services, in no case is Advisor providing: (i) advice as to the value of securities or the advisability of investing in, purchasing, or selling securities or (ii) investment advice or recommendations as to or on: (A) the advisability of the prospects of or for any particular company or security, or (B) the price or future price of or price levels of any security, security index, securities market, commodity, commodity index or commodity market. The Company further acknowledges and agrees that it is responsible and liable for any actions or determinations (including any investment decisions) made by the Group.

4. Quality of Services. Advisor shall render the Services in a professional, timely and workmanlike manner. The Services will be performed with the same degree of diligence and care as such Services are performed by Advisor for other portfolio companies of its managed funds.

5. Compensation.

(a) The Company shall pay, or cause its subsidiary entities to pay, to Advisor an advisory fee (the "Advisory Fee") of (i) $5,000,000 for the calendar year 2021, *pro rated* based upon the number of days in calendar year 2021 during which this Agreement is effective, (ii) $5,000,000 per annum for calendar years 2022 and 2023, (iii) $2,500,000 per annum for calendar year 2024, and (iv) $1,250,000 per annum for each calendar year thereafter, in each case, as specified below (the "Base Fee Amount"). The Advisory Fee shall be paid in cash.

(b) Payment of the Advisory Fee shall be made for each calendar year in equal quarterly installments of the Advisory Fee applicable to such calendar year (each a "Quarterly Installment Payment") in cash in arrears for each preceding quarter on January 1, April 1, July 1 and October 1 of each year (each a "Quarterly Installment Payment Date"); provided that (i) the first Quarterly Installment Payment Date shall be the first such date following the Effective Date (the "First Installment Date") and (ii) each payment for such a year shall be in an amount equal to the quotient of (i) the Base Fee Amount for such year *divided by* (ii) the number of Quarterly Installment Payment Dates occurring after the Effective Date and applicable to such calendar year.

(c) The Advisory Fee shall be subject to value added tax, sales tax or other similar taxes, where applicable.

(d) The Company shall reimburse, or cause its subsidiaries to reimburse, Advisor monthly for Out-of-Pocket Expenses (as defined below), incurred following the Effective Date. For the purposes of this Agreement, "Out-of-Pocket Expenses" means (i) the documented, reasonable and actual out-of-pocket costs and expenses incurred by the Advisor while delivering products and/or services to the Company or any Group member in connection with the Services (excluding wages, salaries, and all other customary overhead expenses of the Advisor), (ii) reasonable fees and disbursements of unaffiliated third party advisors or consultants while delivering products and/or services to the Company or any Group member (but excluding for the avoidance of doubt such fees and disbursements incurred in advising Advisor or its Affiliates including in its capacity as an investor in the Company), and (iii) reasonable costs of any outside services of independent contractors such as financial printers, couriers, business publications, online financial services or similar services incurred while delivering products and/or services to the Company or any Group member.

(e) The provisions of this Section 5 shall survive the expiration or termination of this Agreement.

(f) The Platinum-appointed directors of the Board that are not Independent Directors shall not receive any fees on account of serving on the Board.

6. Common Legal Interest. Advisor and the Company agree that they share a mutual and common legal interest to cooperate in the prosecution or defense of pending or future litigations, arbitrations, claims, investigations, and regulatory actions that may arise from time to time and may be considered a single corporate client in respect of their representation by legal counsel in certain matters. Such cooperation and single corporate client status may involve the exchange of privileged and/or confidential, business, financial, technical or other documents, information and communications between Advisor and its affiliates, counsel, consultants or other agents on the one hand, and the Company and its affiliates, counsel, consultants and agents on the other. In order to allow the sharing of such privileged and/or confidential documents, information and communications in furtherance of any common legal interest and/or single corporate client status, Advisor and the Company agree to maintain, and will direct their respective counsel, consultants and other agents to maintain, the confidentiality of documents, information and communications that have been or will be exchanged (collectively, "Common Interest Materials"). All Common Interest Materials exchanged between or among Advisor and the Company, their respective counsel, and any consultants or agents that may be retained by either of them or their respective counsel are confidential and are protected from disclosure to third parties by the attorney-client privilege, the joint defense privilege, the common interest privilege, or the attorney work-product doctrine, which privileges and protections may not be waived by any person without the prior written consent of the holder of the privilege. In sharing Common Interest Materials, Advisor and the Company rely and invoke the joint defense or common interest exception to the waiver of the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection.

7. Representation and Warranties.

(a) Advisor represents and warrants that as of the date hereof that (i) Advisor is a company duly organized and validly existing under the laws of the state of Delaware, and all corporate and other internal authorization required for the execution of this Agreement have been obtained, and (ii) this Agreement does not materially violate any agreements to which Advisor is a party.

(b) The Company represents and warrants to Advisor that as of the date hereof that (i) the Company is a company duly organized and validly existing under the laws of the State of Delaware, and all corporate and other internal authorization required for the execution of this Agreement have been obtained, and (ii) this Agreement does not materially violate any agreements to which the Company is a party.

8. Indemnification; Limitation of Liability.

(a) Indemnification. The Company will indemnify and hold harmless Advisor and its Affiliates and their respective partners (both general and limited), members (both managing and otherwise), officers, directors, employees, agents and representatives (each such person being an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, whether joint or several (the "Liabilities"), related to, arising out of or in connection with the Services contemplated by this Agreement or the engagement of Advisor pursuant to, and the performance by Advisor of the Services contemplated by this Agreement, whether or not pending or threatened, whether or not an Indemnified Party is a party, whether or not resulting in any liability and whether or not such action, claim, suit, investigation or proceeding is initiated or brought by or on behalf of the Company or any other Group member. The Company will reimburse any Indemnified Party for all reasonable costs and expenses (including reasonable attorneys' fees and expenses) as they are incurred in connection with investigating, preparing, pursuing, defending or assisting in the defense of any action, claim, suit, investigation or proceeding for which the Indemnified Party would be entitled to indemnification under the terms of the previous sentence, or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto. The Company hereby acknowledges that certain Indemnified Parties have certain rights to indemnification, advancement of expenses and/or insurance provided by Advisor and its Affiliates in connection with the Indemnified Party's activities on behalf of Advisor and its Affiliates, including acting as a director of a current or former portfolio company that Advisor and its Affiliates intend to be secondary to the primary obligation of the Company to indemnify such Indemnified Party pursuant to and in accordance with the indemnification provision in this Section 8(a). The Company acknowledges and agrees that (a) the Company is the indemnitor of first resort and the Company is wholly and primarily responsible for the payment of any and all indemnification to which any Indemnified Party is entitled under this Section 8(a) or otherwise pursuant to any rights that the Company has granted to such Indemnified Party in connection with its performance of the Services, and any obligation of Advisor and its Affiliates to provide indemnification for the same expenses or liabilities incurred by such Indemnified Party is secondary, (b) any such indemnification and expenses shall be paid by or on behalf of the Company, and (c)

the Company irrevocably waives, relinquishes and releases Advisor and its Affiliates from any and all claims against Advisor and its Affiliates for contribution, reimbursement, subrogation, set-off, exoneration or otherwise from any of Advisor and its Affiliates thereof for amounts paid in respect thereof. The Company further agrees to indemnify, reimburse and hold harmless each of Advisor and its Affiliates for any and all amounts for which the Company is wholly and primarily responsible under this Section 8(a) in the event that any of Advisor and its Affiliates actually pays any such amounts for any reason to or on behalf of any Indemnified Party. The Company will not be liable under the foregoing indemnification provision with respect to any particular loss, claim, damage, liability, cost or expense of an Indemnified Party that is determined by a court of competent jurisdiction, in a final judgment from which no further appeal may be taken, to have resulted primarily from the willful misconduct, gross negligence or bad faith of Advisor or such Indemnified Party. The attorneys' fees and other expenses of an Indemnified Party shall be paid by the Company as they are incurred conditioned upon receipt, in each case, of an undertaking by or on behalf of the Indemnified Party to repay such amounts if a court of competent jurisdiction renders a final non-appealable judgment that the Liabilities in question resulted primarily from willful misconduct, gross negligence or bad faith of Advisor or such Indemnified Party. If such indemnification is for any reason not available or insufficient to hold an Indemnified Party harmless, the Company agrees to contribute to the Liabilities involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Group, on the one hand, and by Advisor, on the other hand, with respect to the Services or, if such allocation is determined by a court or arbitral tribunal to be unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of the Group, on the one hand, and of Advisor, on the other hand; provided, however, that to the extent permitted by applicable law, the Indemnified Parties shall not be responsible for amounts in excess of the Advisory Fee accrued by the Company in the prior twelve months (but only to the extent actually received by Advisor). Relative benefits to the Group, on the one hand, and to Advisor, on the other hand, with respect to the Services shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the Group in connection with the Services or any transactions to which the Services relate bears to (ii) all fees actually received by Advisor in connection with the Services. The provisions of this Section 8(a) shall survive the expiration or termination of this Agreement.

(b) Limitation of Liability. Notwithstanding anything herein to the contrary, the maximum aggregate monetary or other liability that Advisor shall have to the Company, a Group member or any other party (including, without limitation, the Company's or a Group member's officers, directors, employees, agents and other representatives and stockholders) with respect to any and all claims (on a cumulative basis) related to or in connection with the breach or alleged breach hereof by Advisor, or related to or in connection with the Services provided or to be provided hereunder, shall be limited to the Advisory Fee accrued by the Company in the prior twelve months (but only to the extent actually received by Advisor). Notwithstanding anything herein to the contrary, Advisor shall not be liable under any circumstance for any special, consequential, indirect, punitive or exemplary, or similar, damages arising from its provision of the Services or otherwise related to or in connection with this Agreement. The provisions of this Section 8(b) shall survive the expiration or termination of this Agreement.

9. Permissible Activities. Subject to applicable law, nothing herein will in any way preclude Advisor or its Affiliates (other than the Group and its respective employees) or their respective partners (both general and limited), members (both managing and otherwise), officers, directors, employees, agents or representatives from engaging in any business activities or from performing services for its or their own account or for the account of others, including for companies that may be in competition with the business conducted by the Group.

10. Accuracy and Confidentiality of Information to be Provided.

(a) The Company will furnish or cause to be furnished to Advisor such information as Advisor believes reasonably appropriate to its Services hereunder, and Advisor acknowledges that it will have access to confidential information, records, trade secrets of the Company and certain proprietary information of a business, financial, marketing, technical or other nature pertaining to the Company (all such information so furnished, the "Information"). Without limiting the generality of the foregoing, the Company agrees to furnish to Advisor monthly financial data of the type customarily prepared by the Company for senior management, except to the extent that the Company and Advisor may otherwise mutually agree with respect to the extent and/or the frequency of the data to be so furnished to Advisor. The Company recognizes and confirms that Advisor (a) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the Services contemplated by this Agreement without having independently verified the same, (b) does not assume responsibility for the accuracy or completeness of the Information and such other information and (c) is entitled to rely upon the Information without independent verification.

(b) During the term of this Agreement, and for a period of 2 years after the expiration or termination of this Agreement for any reason, Advisor shall not directly or indirectly disclose Information to any person or entity or use any Information for its own benefit or the benefit of any other person or entity without the Company's prior written consent. All records, files, documents and equipment relating to the Company's business which Advisor shall prepare, use, or come into contact with, shall be and remain the Company's sole property and shall be returned to the Company (or, at Advisor's option, destroyed) upon expiration or termination of this Agreement for any reason. Notwithstanding anything to the contrary in this Agreement, Advisor may disclose any Information in the event that Advisor is required by applicable law, subpoena, court order, legal process, rule, regulation, or governmental or regulatory body to disclose all or any portion of the Information. The provisions of this Section 10 (b) shall survive for 2 years after the expiration or termination of this Agreement.

11. Independent Contractor. Advisor shall act solely as an independent contractor and shall have complete charge of its personnel engaged in the performance of the Services or any other advice or services contemplated by this Agreement. As an independent contractor, Advisor shall have authority only to act as an advisor to the Company and the other Group members and shall have no authority to enter into any agreement or to make any representation, commitment or warranty binding upon the Company or any of the other Group members or to obtain or incur any right, obligation or liability on behalf of the Company or any of the other Group members. Nothing contained in this Agreement shall cause Advisor to be deemed a partner of or joint venturer with the Company or any of the other Group members. Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of partners or joint ventures between Advisor or any of its partners or members or any of their Affiliates, investment managers, investment Advisor or partners, and the Company or any of the other Group members.

12. Notices. All notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be delivered by hand, sent by recognized overnight courier or given by email sent to the addresses set forth below. All such communications shall be deemed to have given or made when delivered by hand, sent by email upon confirmed receipt, or one business day after being delivered to a recognized overnight courier.

(a) If to Advisor, to:

Platinum Equity Advisors, LLC
360 N. Crescent Dr.
Beverly Hills, CA 90210
Attention: John Holland, General Counsel
Email: jholland@platinumequity.com

(b) If to the Company, to:

Custom Truck One Source, Inc.
6714 Pointe Inverness Way
Suite 220
Fort Wayne, IN 46804
Attn: Josh Boone
Email: josh.boone@nescorentals.com

13. Modification. This Agreement may not be modified or amended in any manner other than by an instrument in writing signed by all of the parties hereto, or their respective successors or permitted assigns.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement or understanding among them with respect to such subject matter.

15. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

16. Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing and signed by or on behalf of the party granting the waiver. The waiver of either party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

17. Assignment. This Agreement may not be assigned by any party hereto without the written consent of the other party; provided, that Advisor shall be entitled to assign this Agreement to any Affiliate of Advisor. Any assignment in violation of the foregoing shall be null and void.

18. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of New York. Each of the parties agrees that all actions, suits or proceedings arising out of or based upon this Agreement or the subject matter hereof shall be brought and maintained exclusively in the federal and state courts located in the State of New York sitting in New York County and of the United States District Court of the Southern District of New York. Each of the parties hereto by execution hereof (i) hereby irrevocably submits to the jurisdiction of the federal and state courts located in the State of New York sitting in New York County and of the United States District Court of the Southern District of New York for the purpose of any action, suit or proceeding arising out of or based upon this Agreement or the subject matter hereof and (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, suit or proceeding, any claim that is not subject personally to the jurisdiction of the above-named courts, that it is immune from extraterritorial injunctive relief or other injunctive relief, that its property is exempt or immune from attachment or execution, that any such action, suit or proceeding may not be brought or maintained in one of the above-named courts, that any such action, suit or proceeding brought or maintained in one of the above-named courts should be dismissed on grounds of forum non conveniens, should be stayed by virtue of the pendency of any other action, suit or proceeding in any court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by any of the above-named courts. Each of the parties hereto hereby consents to service of process in any such suit, action or proceeding in any manner permitted by the laws of the State of New York, agrees that service of process by registered or certified mail, return receipt requested, at the address specified in or pursuant to Section 12 is reasonably calculated to give actual notice and waives and agrees not to assert by way of motion, as a defense or otherwise, in any such action, suit or proceeding any claim that service of process made in accordance with Section 12 does not constitute good and sufficient service of process. The provisions of this Section 18 shall not restrict the ability of any party to enforce in any court any judgment obtained in a federal or state court located in the State of New York sitting in New York County and of the United States District Court of the Southern District of New York.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, CAUSE OF ACTION, ACTION, SUIT OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. Each of the parties hereto acknowledges that it has been informed by the other party that the provisions of this paragraph constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby. Any of the parties hereto may file an original counterpart or a copy of this Agreement with any court as written evidence of the consent of each of the parties hereto to the waiver of its right to trial by jury.

19. Dispute Resolution.

(a) In the event of any controversy or claim arising out of or relating to this Agreement (hereafter, a "Dispute"), Advisor and Board Representative shall work in good faith, using reasonable best efforts and recognizing their mutual interests, to resolve such Dispute in a manner satisfactory to both the Advisor and the Company. If Advisor and Board Representative do not resolve such Dispute within thirty (30) business days after notice of the Dispute is provided to the other party, the Dispute shall be determined by arbitration (the "Arbitration") administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules (the "Rules"). Notwithstanding the foregoing, either party may immediately bring a proceeding seeking temporary or preliminary injunctive relief in a court having jurisdiction thereof which shall remain in effect until a final award is made in the Arbitration.

(b) The Arbitration shall be administered before one arbitrator, who shall be selected jointly by Advisor and Board Representative, or if such parties cannot agree on the selection of the arbitrator, shall be selected by the American Arbitration Association (provided that any arbitrator selected by the American Arbitration Association shall not be affiliated with either party without the written consent of the non-affiliated party). Judgment may be entered on the arbitrator's award in any court having jurisdiction. The arbitrator

shall be empowered to enter an equitable decree mandating specific enforcement of the terms of this Agreement. The Company and Advisor shall equally bear all expenses of the American Arbitration Association (including those of the arbitrator) incurred in connection with the Arbitration, provided, however, that the applicable party shall bear all such expenses if the arbitrator or relevant trier-of-fact determines that such party's claim or position was frivolous.

(c) "Board Representative" means an Independent Director appointed by a vote of the majority of the Company's Independent Directors.

20. Successors and Assigns. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, heirs, administrators, executors, successors and permitted assigns.

21. Counterparts. This Agreement may be executed in several counterparts (including via facsimile or other electronic method), each of which shall be deemed an original but all of which shall constitute one and the same instrument. It shall not be necessary for all parties to execute the same counterpart hereof.

22. No Third-Party Beneficiaries. Except for the Indemnified Parties, who are express and intended third party beneficiaries of this Agreement, no persons other than the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

23. Headings. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

24. Interpretation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, the feminine or neuter gender shall include the masculine, the feminine and the neuter. The construction of this Agreement shall not take into consideration the party who drafted or whose representative drafted any portion of this Agreement, and no canon of construction shall be applied that resolves ambiguities against the drafter of a document.

25. Data Protection - GDPR.

(a) As used in this Section 25, all references to the "Company" shall mean the Company (or a subsidiary of Company, as applicable) providing personal data to Advisor to be processed on its behalf as a processor or sub-processor, as applicable. To the extent that Advisor receives personal data from Company, and provided Company is subject to the GDPR (as defined below), if Advisor processes such personal data as a processor or sub-processor, as applicable, on behalf of the Company, this Section 25 shall apply. In relation to all such personal data, Advisor agrees to:

(i) process, hold and use the personal data as instructed by the Company and only pursuant to the documented instructions of the Company;

(ii) provide adequate protection by implementing such security measures as are necessary and appropriate in relation to the systems in which the personal data is held by Advisor to guard against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to the personal data and ensure a level of security appropriate to the risk;

(iii) take such steps as are necessary to ensure that its personnel who have access to the personal data are reliable and adequately trained;

(iv) ensure that personnel with access to the personal data are bound by confidentiality obligations in respect of access, use or processing of the personal data;

(v) notify the Company without undue delay upon becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data (each, a "personal data breach");

(vi) notify the Company if, in Advisor's opinion, any instruction from the Company infringes the GDPR or other applicable EU or Member State data protection laws;

(vii) taking into account the nature of the processing and information available to Advisors and to the extent necessary to facilitate the Company's compliance with its obligations under the GDPR, provide reasonable assistance to the Company in relation to (i) the Company's obligation to respond to requests from data subjects to exercise their rights under the GDPR; and (ii) the Company's obligations under Articles 32 (security of processing), 33 (notification of personal data breach to the supervisory authority), 34 (communication of a personal data breach to the data subject), 35 (data protection impact assessments) and 36 (prior consultation) of the GDPR; and

(viii) make available to the Company information reasonably necessary to demonstrate Advisor's compliance with this Section 24 and permit at the Company's own expense and not more than once in any twelve (12) month period, the Company's independent auditors to inspect Advisor's arrangements for complying with this Section 25 and provide the report to the Company, provided, that a reasonable period of notice is given in advance of such an inspection and that it is conducted during Advisor's normal business hours and the report remains confidential information of Advisor and shall not be disclosed to any other party.

(b) Advisor may transfer personal data supplied to it by the Company solely for processing to sub-processors who may be authorized from time to time to provide payroll, administrative, legal, accounting and other services. A list of such sub-processors is available from Advisor upon request, and Advisor will provide the Company with reasonable prior notice in relation to any changes to that list of sub-processors. Advisor may not transfer personal data belonging to the Company to any other third party without the Company's express permission in writing. It is a condition of this Agreement that each entity that receives personal data belonging to the Company from Advisor must be bound in writing by terms at least as protective of such personal data as those in Section 25(a) above and that such transferee agrees in writing that the Company may enforce such provisions against it directly.

(c) The obligations of the parties under this Section 25 shall survive the expiration or termination of this Agreement.

(e) The duration of the processing by Advisor of personal data is the term of this Agreement. The subject matter, nature and purposes of processing by Advisor is the receipt of the Services by the Company and provision of the Services by Advisor. The categories of data subjects include the following: suppliers, employees, emergency contacts, customers, clients and prospects.

(f) The types of personal data include the following (and such other information necessary for the Company to receive the benefit of the Services): identification data (*e.g.*, names, addresses, dates/places of birth), personal life data (*e.g.*, living habits, marital status), professional life data (*e.g.*, resume, education, professional training), economic and financial information, traffic data (such as IP addresses, event logs) and location data.

(g) As used in this Section 25, the terms "personal data", "processing" and "data subject" shall have the meanings ascribed to such terms under Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR").

26. Data Protection - CCPA. To the extent the CCPA (as defined below) applies to the processing of personal data by a party to this Agreement, whether such personal data is (i) information regarding employees, customers, suppliers, or other natural persons related to the other party or (b) information regarding employees, customers, suppliers, or other natural persons related to a third party (such as a target company for an acquisition), then such party receiving personal data agrees to comply with the California Consumer Privacy Act of 2018, as amended (the "CCPA"). The parties further acknowledge and agree that, solely for purposes of the CCPA, Consultant acts as a CCPA Service Provider, and Company does not sell personal data to Consultant. As used in this Section 12, "personal data", "processing" and "Service Provider" shall have the meanings ascribed to such terms in the CCPA.

[signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

PLATINUM EQUITY ADVISORS, LLC

By: /s/ Mary Ann Sigler
Name: Mary Ann Sigler
Title: Executive Vice President and Chief Financial Officer

CUSTOM TRUCK ONE SOURCE, INC.

By: /s/ Joshua Boone
Name: Joshua Boone
Title: Chief Financial Officer

[Signature Page to the Corporate Advisory Services Agreement]

Exhibit 10.7

FORM INDEMNIFICATION AND ADVANCEMENT AGREEMENT

This Indemnification and Advancement Agreement ("Agreement") is made as of _____ __, 20__ by and between _____, Inc., a Delaware corporation (the "Company"), and _____, [a member of the Board of Directors/an officer/an employee/an agent/a fiduciary] of the Company ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering indemnification and advancement.

RECITALS

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws and Certificate of Incorporation of the Company require indemnification of the officers and directors of the Company and advancement of expenses. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Bylaws, Certificate of Incorporation, and the DGCL expressly provide that the indemnification and advancement of expenses provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified or receive advancement of expenses;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws, Certificate of Incorporation and any resolutions adopted pursuant thereto, and is not a substitute therefor, nor diminishes or abrogates any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Bylaws, Certificate of Incorporation, DGCL and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve the Company without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as [a/an] [director/officer/employee/agent/fiduciary] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) "Agent" means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A "Change in Control" occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative beneficial ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

1 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

2 "Person" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

3 "Beneficial Owner" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(f) "Expenses" includes all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, do not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(h) The term "Proceeding" includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee's Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting pursuant to Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to or culminate in the institution of a Proceeding.

(i) "Sponsor Entities" means [insert applicable entities].

Section 3. Indemnity in Third-Party Proceedings. The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or

in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court of Chancery or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. To the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. To the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers and directors) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor).

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any indemnification payment to Indemnitee in connection with any Proceeding:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent provided in Section 15(b) and except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or

equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of any Proceeding) initiated pursuant to Section 14 of this Agreement, (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding.

(b) Advancement of Expenses will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will advance Expenses without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

Section 11. Procedure for Notification of Claim for Indemnification or Advancement.

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding and the facts underlying the Proceeding and provide such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company will, promptly upon receipt of such a request for indemnification or advancement, advise the Board in writing that Indemnitee has requested indemnification or advancement.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or

iv. if so directed by the Board, by the stockholders of the Company.

(b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board).

(c) The party selecting Independent Counsel pursuant to subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding pursuant to Section 14(a) of this Agreement, any selected Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within thirty (30) days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of

conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not made pursuant to Section 12 within sixty (60) days after the later of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 11(a) and (ii) the final disposition of the Proceeding for which Indemnitee requested Indemnification (the "Determination Period"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a)(iv) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise, or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant, or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) are not exclusive and do not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Company or an Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the determination of entitlement to indemnification is not made pursuant to Section 12 of this Agreement within the Determination Period, (iv) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within thirty (30) days after receipt by the Company of a written request therefor, (v) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder. Indemnitee must commence such Proceeding seeking an adjudication within one hundred and eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 5 of this Agreement. The Company will not oppose Indemnitee's right to seek any such adjudication.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company is, to the fullest extent not prohibited by law, precluded from asserting in any judicial proceeding commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such court that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company, to the fullest extent permitted by law, will (within thirty (30) days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with any action concerning this Agreement, or Indemnitee's right to indemnification or advancement of Expenses from the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that Indemnitee's claims in such action were made in bad faith or were frivolous or are prohibited by law.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws, Certificate of Incorporation, or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more other persons with whom or which Indemnitee may be associated ("Persons") (including, without limitation, any Sponsor Entities). The relationship between the Company and such Persons (other than an Enterprise or the Company's insurers) with respect to the Indemnitee's rights to indemnification, advancement of Expenses, and insurance is described by this subsection, subject to the provisions of subsection (d) of this Section 15 with respect to a Proceeding concerning Indemnitee's Corporate Status with an Enterprise.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding;

2) the Company is primarily liable for all indemnification and indemnification or advancement of Expenses obligations for any Proceeding, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases (A) any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement and (B) any right to participate in any claim or remedy of Indemnitee against any Person (including, without limitation, any Sponsor Entities), whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Person (including, without limitation, any Sponsor Entities), directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right.

iii. In the event any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities).

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated (including, without limitation, any Sponsor Entities) is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company, the Company will obtain a policy or policies covering Indemnitee to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required.

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses

to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 16. Duration of Agreement. This Agreement continues until and terminates upon the later of: (a) ten (10) years after the date that Indemnitee ceases to have a Corporate Status or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement are binding upon and will be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 18. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification and advancement in excess of that expressly provided, without limitation, by the Certificate of Incorporation, the Bylaws, vote of the Company stockholders or disinterested directors, or applicable law.

Section 19. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and is not a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 20. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or constitutes a waiver of any other provisions of this Agreement nor will any waiver constitute a continuing waiver.

Section 21. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 22. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by facsimile transmission or electronic mail, with receipt of oral confirmation that such communication has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.

(b) If to the Company to:

[Name], Inc.
[Address]
Attention:
Fax:
Email:

or to any other address as may have been furnished to Indemnitee by the Company.

Section 23. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 24. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action arising out of or in connection with this Agreement may be brought only in the Delaware Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 25. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitutes one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 26. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

COMPANY

INDEMNITEE

By: _____

Name:

Office:

Name:

Address: _____

_____

_____

Exhibit 99.1

Nesco Holdings Completes Acquisition of Custom Truck One Source in Partnership with Platinum Equity and Changes Its Name to Custom Truck One Source, Inc.

Kansas City, MO., April 1, 2021 /PRNewsire/ Nesco Holdings, Inc. (NYSE: NSCO) ("Nesco"), which has been renamed as Custom Truck One Source, Inc. (the "Company") effective today, in partnership with an affiliate of Platinum Equity, LLC ("Platinum"), today announced the closing of the previously announced transaction to acquire Custom Truck One Source, L.P. ("CTOS") for a purchase price of $1.475 billion. Nesco and CTOS are leading providers of specialized truck and heavy equipment solutions, including rental, sales and aftermarket parts and service.

The Company is headquartered in Kansas City, Missouri and led by CTOS co-founder and CEO Fred Ross. The combination creates a leading, one-stop-shop provider of specialty rental equipment, serving highly attractive and growing infrastructure end markets, including the transmission and distribution energy grid, the 5G revolution build-out and critical rail and other national infrastructure initiatives.

In connection with the Acquisition, the Company has changed its name to Custom Truck One Source, Inc. Its shares of common stock will trade on the NYSE under the ticker symbol "CTOS" beginning on April 5, 2021, and its existing warrants will trade on the NYSE under the ticker symbol "CTOS.WS". The Company's leadership team also includes Ryan McMonagle as President and Chief Operating Officer and Brad Meader as Chief Financial Officer, both of whom previously held those positions at CTOS.

"We are truly excited about bringing these two great companies together," said Mr. Ross. "We believe that our stockholders will realize the benefits of the combination as we create one of the largest specialty rental fleets in the country. Moreover, we are excited to bring a larger platform to our customers and to continue to provide them with the outstanding customer service they have come to expect from both of us."

In connection with the Acquisition, Platinum has made an investment and became the majority stockholder of the Company while existing CTOS equity holders, including certain funds managed by the Blackstone Group ("Blackstone"), the majority owner of CTOS prior to the Acquisition, and certain members of the CTOS management team, became minority stockholders of the Company. Energy Capital Partners ("ECP") and Capitol Investment ("Capitol"), who together owned approximately 70% of Nesco's outstanding common stock prior to the Acquisition, retained their entire ownership positions in the Company.

"We look forward to working with the management team to bring these companies together and to putting our playbook in action to create significant shareholder value for many years to come," said Platinum Equity Partner Louis Samson. "We have a lot of experience in this industry and are excited about the opportunities ahead."

"We are thrilled to consummate this merger which creates a very unique, valuable, well-capitalized company that is a terrific business and now also will benefit from, and play an important role in, the likely large investment about to be made in our nation's electrical, telecom and rail infrastructure," said Mark Ein, Capitol's CEO and Nesco's Vice-Chairman who will join the CTOS board.

FORWARD-LOOKING STATEMENTS

This press release includes "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States Private Securities Litigation Reform Act of 1995 and within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended. When used in press release, the words "anticipates," "believes," "will,"

"expects," "look forward" and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. These forward-looking statements are not guarantees of future performance, conditions or results, and involve a number of known and unknown risks, uncertainties, assumptions and other important factors, many of which are outside the Company's management's control, that could cause actual results or outcomes to differ materially from those discussed in this press release. Important factors, among others, that may affect actual results or outcomes include: the impact of the COVID-19 pandemic on the Company's business and operations as well as the overall economy; the Company's ability to integrate the Nesco and CTOS businesses and achieve the expected benefits of the Acquisition in a timely manner; unanticipated costs related to the integration; and general economic and market conditions impacting demand for the Company's services. For a more complete description of these and other possible risks and uncertainties, please refer to the Company's Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Securities and Exchange Commission on March 9, 2021, as updated by the Company's subsequent quarterly reports on Form 10-Q.

ABOUT THE COMPANY

The Company is a leading provider of specialized truck and heavy equipment solutions to the utility, telecommunications, rail and infrastructure markets in North America. The Company's solutions include rentals, sales, aftermarket parts, tools, accessories and service, equipment production, manufacturing, financing solutions, and asset disposal. With vast equipment breadth, the Company's team of experts service its customers across an integrated network of locations across North America. For more information, please visit customtruck.com.

INVESTOR CONTACT

Brad Meader, Chief Financial Officer
800.252.0043
investors@customtruck.com

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Current Fiscal Year End Date	--12-31
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Entity Tax Identification Number	84-2531628
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Entity Address, City or Town	Kansas City
Entity Address, State or Province	MO
Entity Address, Postal Zip Code	64125
City Area Code	816
Local Phone Number	241-4888
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  "Subsection": "b"
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  "Number": "240",
  "Publisher": "SEC",
  "Section": "12",
  "Subsection": "b-23"
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  "Number": "240",
  "Publisher": "SEC",
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  "Subsection": "a"
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  "Publisher": "SEC",
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  "Section": "240",
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  "Number": "240",
  "Publisher": "SEC",
  "Section": "13",
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  "Publisher": "SEC",
  "Section": "12",
  "Subsection": "b-2"
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  "Number": "232",
  "Publisher": "SEC",
  "Section": "405"
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  "Number": "230",
  "Publisher": "SEC",
  "Section": "425"
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  "Publisher": "SEC",
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