FORM 8-K

Current report filing

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FILER

TUESDAY MORNING CORP/DE
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Mailing Address
6250 LBJ FREEWAY
DALLAS TX 75240

Business Address
6250 LBJ FREEWAY
DALLAS TX 75240
972-387-3562

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): December 31, 2020

TUESDAY MORNING CORPORATION
(Exact name of registrant as specified in charter)

Delaware	**0-19658**	**75-2398532**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

6250 LBJ Freeway **Dallas, Texas**	**75240**
(Address of principal executive offices)	(Zip Code)

(972) 387-3562
(Registrant's telephone number, including area code)

Not applicable
(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 (17 CFR 240.14a-12)

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

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

Securities registered pursuant to Section 12(b) of the Act: None

Indicate by check mark whether the registrant is an emerging growth company as defined in 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. ☐

As previously disclosed, on May 27, 2020 (the "Petition Date"), Tuesday Morning Corporation and certain of its direct and indirect subsidiaries (collectively with the Company, the "Debtors") filed voluntary petitions (the "Chapter 11 Cases") under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Chapter 11 Cases are being administered jointly under the caption "In re: Tuesday Morning Corporation, *et. al*., Case No. 20-31476-HDH-11."

On December 23, 2020, as previously disclosed, the Bankruptcy Court entered an order confirming the Company's Revised Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Plan of Reorganization"). On December 31, 2020 (the "Effective Date"), all of the conditions precedent to the Plan of Reorganization were satisfied.

Pursuant to the Plan of Reorganization, each outstanding share of the Company's common stock as of the "rights offering/ exchange determination date" will be exchanged (the "Exchange") for (1) one new share of the Company's stock and (2) a share purchase right entitling the holder to purchase its pro rata portion of shares available to eligible holders in the Rights Offering (as defined below). As previously disclosed, the Company anticipates the "rights offering/exchange determination date" will be the close of business on January 4, 2021. In accordance with the Plan of Reorganization, the Company will conduct a $40 million rights offering (the "Rights Offering"), under which eligible holders of the Company's common stock may purchase up to $24 million of shares of the Company's common stock at a purchase price of $1.10 per share, and Osmium Partners, LLC or its affiliates (the "Backstop Party"), may purchase up to $16 million of shares of the Company's common stock at a purchase price of $1.10 per share. Pursuant to a backstop commitment agreement, the Backstop Party has agreed to purchase all unsubscribed shares in the Rights Offering. The Rights Offering will remain open until 4:00 central time, on February 1, 2021.

Following the Exchange, the CUSIP Number for the Company's common stock will be 89904V 101. The Company's common stock is registered under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Company will remain subject to the periodic reporting requirements under the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

ABL Facility

On December 31, 2020, the Company and its subsidiaries entered into a Credit Agreement (the "ABL Credit Agreement") with JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A. and Bank of America, N.A. (collectively, the "Lenders"), which provides for a revolving credit facility in an aggregate amount of $110 million (the "ABL Facility"). The ABL Credit Agreement includes conditions to borrowings, representations and warranties, affirmative and negative covenants, and events of default customary for financings of this type and size. The ABL Credit Agreement requires the Company to maintain a minimum fixed charge coverage ratio if borrowing availability falls below certain minimum levels.

Under the terms of the ABL Credit Agreement, amounts available for advances would be subject to a borrowing base as described in the ABL Credit Agreement. Under the ABL Credit Agreement, borrowings under the ABL Facility initially will bear interest at a rate equal to the adjusted LIBOR rate plus a spread of 2.75% or the CB rate plus a spread of 1.75%.

The ABL Facility is secured by a first priority lien on all present and after-acquired tangible and intangible assets of the Company and its subsidiaries other than certain collateral that secures the Notes (as defined below). The commitments of the Lenders under the ABL Facility will terminate and outstanding borrowings under the ABL Facility will mature on the third anniversary of the closing of the ABL Facility.

The foregoing summary of the ABL Credit Agreement is qualified in its entirety by reference to the full text of the ABL Credit Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

TCM Credit Agreement

On December 31, 2020, the Company and Tensile Capital Partners Master Fund LP ("TCM") entered into a Credit Agreement (the "TCM Credit Agreement"). Pursuant to the TCM Credit Agreement, TCM provided a term loan of $25 million to the Company (the "Loan").

Pursuant to the terms of the TCM Credit Agreement, the Loan has a maturity of 48 months from the date of issuance and bears interest at a rate of 14% per annum, with interest payable in-kind. Under the terms of the TCM Credit Agreement, the Loan is secured by a second lien on the collateral securing the ABL Facility and a first lien on certain other assets of the Company as described in the TCM Credit Agreement. The Loan is subject to optional prepayment after the first anniversary of the date of issuance at prepayment price equal to the greater of (1) the original principal amount of the Loan plus accrued interest thereon, and (2) 125% of the original principal amount of the Loan. The Loan is subject to mandatory prepayment in connection with a change of control of the Company as described in the TCM Credit Agreement. The TCM Credit Agreement also includes customary covenants and events of default.

The foregoing summary of the TCM Credit Agreement is qualified in its entirety by reference to the full text of the TCM Credit Agreement, a copy of which is attached hereto as Exhibit 10.2 and incorporated by reference herein.

Sale Leaseback

On December 31, 2020, in accordance with that certain purchase and sale agreement, dated as of December 7, 2020 (the "Purchase and Sale Agreement"), among the Company and certain subsidiaries and PBV – 14303 Inwood, LP (the "Purchaser"), the Company completed the sale of its Dallas headquarters and warehouse facilities (the "Properties") to the Purchaser for an aggregate purchase price of $70.25 million.

In connection with the closing of the sale of the Properties, on December 31, 2020, the Company and certain subsidiaries and the Purchaser entered into lease agreements under which the Company will lease the Properties following the close of the sale under the Purchase and Sale Agreement. The lease agreement of the headquarters facility (the "Headquarters Facility Lease Agreement") will be for a term of 10 years and the lease of the warehouse facilities (the "Warehouse Facility Lease Agreement") will be for an initial term of 2.5 years with an option to extend the warehouse facilities lease for one additional year.

The foregoing summary is qualified in its entirety by reference to the full text of the Purchase and Sale Agreement, Headquarters Facility Lease Agreement and Warehouse Facility Lease Agreement, copies of which are attached hereto as Exhibits 2.1, 10.3 and 10.4, respectively, and incorporated by reference herein.

Indemnification Agreement

In connection with the Effective Date, the Company adopted an updated form of director indemnification agreement (the "Indemnification Agreement"). The Indemnification Agreement provides generally that the Company will indemnify its directors to the fullest extent permitted under applicable law. A copy of the Indemnification Agreement is attached hereto as Exhibit 10.5.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth under the heading "*Sale Leaseback*" in Item 1.01 of this Current Report on Form 8-K 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 in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

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

In accordance with the terms of the Plan of Reorganization, effective as of December 31, 2020, the Company's amended and restated certificate of incorporation (the "Amended and Restated Certificate of Incorporation") and the Company's amended and restated bylaws (the "Amended and Restated Bylaws") became effective.

Through the Amended and Restated Bylaws, the Company's prior bylaws were amended to provide that the number of directors that will initially constitute the board of directors at the Effective Date is nine.

Through the Amended and Restated Certificate of Incorporation, the Company's prior certificate of incorporation was amended by (1) increasing the number of authorized shares of common stock from 100 million shares to 200 million shares, (2) adding a provision restricting the issuance of non-voting equity securities as required by Section 1123 of the Bankruptcy Code, and (3) adding a provision designed to assist the Company in preserving certain tax attributes (the "Tax Benefits"), as discussed below.

In order to continue to assist the Company in preserving the Tax Benefits, the Amended and Restated Certificate of Incorporation imposes certain restrictions on the transferability and ownership of the Company's capital stock (the "Ownership Restrictions"). Subject to certain exceptions, the Ownership Restrictions restrict (i) any transfer that would result in any person acquiring 4.5% or more of the Company's common stock, (ii) any transfer that would result in an increase of the ownership percentage of any person already owning 4.5% or more of the Company's common stock, or (iii) any transfer during the five-year period following the Effective Date that would result in a decrease of the ownership percentage of any person already owning 4.5% or more of the Company's common stock. Pursuant to the Amended and Restated Certificate of Incorporation, any transferee receiving shares of common stock that would result in a violation of the Ownership Restrictions will not be recognized as a stockholder of the Company or entitled to any rights of stockholders. The Amended and Restated Certificate of Incorporation allows the Ownership Restrictions to be waived by the Company's board of directors on a case by case basis. The board of directors has taken action to waive the restrictions with respect to sales of shares acquired in the Rights Offering by the Backstop Party.

The Ownership Restrictions will remain in effect until the earliest of (i) the repeal of Section 382 of the Internal Revenue Code or any successor statute if the board of directors determines the Ownership Restrictions are no longer necessary for preservation of the Tax Benefits, (ii) the beginning of a taxable year in which the board of directors determines no Tax Benefits may be carried forward, or (iii) such other date as shall be established by the board of directors.

The foregoing summary is qualified in its entirety by reference to the full text of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, copies of which are attached hereto as Exhibits 3.1 and 3.2, respectively, and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

2.1	Purchase and Sale Agreement
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated Bylaws
10.1	ABL Credit Agreement
10.2	TCM Credit Agreement
10.3	Headquarters Facility Lease Agreement
10.4	Warehouse Facility Lease Agreement
10.5	Form of Indemnification Agreement

104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

SIGNATURES

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

TUESDAY MORNING CORPORATION

Date: January 4, 2021

By: /s/ Bridgett C. Zeterberg
Bridgett C. Zeterberg
Executive Vice President Human Resources,
General Counsel and Corporate Secretary

Exhibit 2.1

PURCHASE AND SALE AGREEMENT

BETWEEN

TUESDAY MORNING PARTNERS, LTD., TUESDAY MORNING, INC. AND FRIDAY MORNING, LLC
AS SELLER

AND

PBV-14303 INWOOD ROAD, LP
AS PURCHASER

DATED: DECEMBER 3, 2020

Purchase and Sale Agreement
6250 Lyndon B. Johnson Freeway, Dallas, Texas
4404 South Beltwood Parkway, Farmers Branch, Texas
14621, 14639 and 14601 Inwood Road, Addison, Texas
14303 Inwood Road, Farmers Branch, Texas
112267487v1

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LIST OF DEFINED TERMS

PURCHASE AND SALE AGREEMENT
4404 South Beltwood Parkway, Farmers Branch, Texas
14621, 14639 and 14601 Inwood Road, Addison, Texas
14303 Inwood Road, Farmers Branch, Texas
6250 LBJ Freeway, Dallas, Texas

This Purchase and Sale Agreement (this "**Agreement**") is made and entered into by and between Purchaser and Seller.

RECITALS

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meaning set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Purchaser desires to purchase the Property and Seller desires to sell the Property, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

ARTICLE 1
BASIC INFORMATION

1.1 Certain Basic Terms. The following defined terms shall have the meanings set forth below:

1.1.1	**Seller**:	**TUESDAY MORNING PARTNERS, LTD.**, a Texas limited partnership, **TUESDAY MORNING, INC.**, a Texas corporation, and **FRIDAY MORNING, LLC**, a Texas limited liability company
1.1.2	**Purchaser**:	**PBV-14303 INWOOD ROAD, LP**, a Texas limited liability company
1.1.3	**Purchase Price**:	$70,250,000.00
1.1.4	**Earnest Money**:	$6,600,000.00 (the "**Earnest Money**"), including interest thereon, to be deposited in accordance with **Section 3.1** below.
1.1.5	**Title Company**:	Chicago Title Insurance Company 2828 Routh Street, Suite 800 Dallas, Texas 75201 Attn: Holden Heil E-Mail: Holden.Heil@ctt.com

1.1.6	**Escrow Agent**:	Chicago Title Insurance Company 2828 Routh Street, Suite 800 Dallas, Texas 75201 Attn: Holden Heil E-Mail: Holden.Heil@ctt.com
1.1.7	**Broker**:	CBRE, Inc. 2100 McKinney Avenue, Suite 700 Dallas, Texas 75201 Attn: Tim Vogds
1.1.8	**Effective Date**:	The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement. If the execution date is left blank by either Purchaser or Seller, the Effective Date shall be the execution date inserted by the other party.
1.1.9	**Closing Date**:	On or before three (3) Business Days following the effective date of a Reorganization Plan (as defined herein) confirmed by a Plan Confirmation Order (as defined herein). Notwithstanding the foregoing, the Closing Date shall not occur later than December 31, 2020.

1.2 Closing Costs. Closing costs shall be allocated and paid as follows:

Cost	Responsible Party
Title Commitment required to be delivered pursuant to **Section 5.1**	Seller
Premium for standard form Title Policy required to be delivered pursuant to **Section 5.3**	Seller
Premium for any upgrade of Title Policy for any amendments or endorsements to the Title Policy desired by Purchaser, and the costs and expenses associated with any loan policy	Purchaser
Costs for updates, recertifications or amendments to the Survey	Purchaser
Costs for UCC Searches (if requested by Purchaser)	Purchaser
Costs of recording lien releases with respect to Seller's existing financing, if any	Seller
Cost of recording the deed and any other documents required to be recorded by Purchaser	Seller
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Purchaser ½ Seller ½
Real Estate Sales Commission to Broker	Seller
All other closing costs, expenses, charges and fees	As customary in Dallas County, Texas

1.3 Notice Addresses:

Seller:
6250 LBJ Freeway
Dallas, Texas 75240
Attention: Jim Spisak
Telephone: 972-934-7149
E-Mail: jspisak@tuesdaymorning.com &
legal@tuesdaymorning.com

Purchaser:
PBV-14303 Inwood Road, LP
3800 N. Lamar Blvd, Suite 350
Austin, Texas 78756
Attention: Brett Zimmerman

Copy to:
Haynes and Boone LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attention: Brack Bryant
Telephone: 214-651-5335
E-mail: brack.bryant@haynesboone.com

Copy to:
Jackson Walker L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
Attention: Kati Orso
Telephone: (512) 236-2236
E-mail: korso@jw.com

ARTICLE 2
PROPERTY

2.1 Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (collectively, the "**Property**"):

2.1.1 Real Property. The parcels of land described in **Exhibit A** hereto (individually or collectively, as the context may require, the "**Land**"), together with (a) all improvements located thereon ("**Improvements**"), (b) all right, title and interest of Seller, if any, in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, and (c) all right, title, and interest of Seller, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining the Land, as well as all other rights, privileges and appurtenances owned by Seller and in any way related to such land and other rights and interests of Seller hereunder conveyed (collectively, the "**Real Property**"). Seller and Purchaser acknowledge and agree that the Real Property consists of six (6) separate tracts, as identified on **Exhibit A** hereto (each, a "**Tract**"), and generally described as follows: **(i)** 4400-4404 South Beltwood Parkway, Farmers Branch, Texas (the "**4404 Property**"); **(ii)** 14303 Inwood Road, Farmers Branch, Texas (the "**14303 Property**"); **(iii)** 14621 Inwood Road, Addison, Texas (the "**14261 Property**"); **(iv)** 14639-14645 Inwood Road, Addison, Texas (the "**14639 Property**"); **(v)** 14601-14603 Inwood Road, Addison, Texas (the "**14601 Property**"); and **(vi)** 6250 Lyndon B. Johnson Freeway, Dallas, Texas (the "**6250 LBJ Property**"). The 4404 Property and 14621 Property are owned by Tuesday Morning Partners, Ltd., a Texas limited partnership (the "**Tuesday Morning Partners Seller**"), and the 14639 Property and 14601 Property are owned by Friday Morning, LLC, a Texas limited liability company (the "**Friday Morning Seller**"). The 14303 Property and 6250 LBJ Property are owned by Tuesday Morning, Inc., a Texas corporation (the "**Tuesday Morning Inc. Seller**"). Wherever in this Agreement a representation, warranty, covenant or agreement is made by Seller, such representation, warranty, covenant or agreement shall be deemed to be made by the Tuesday Morning Partners Seller, the Friday Morning Seller or the Tuesday Morning Inc. Seller with respect to the Real Property actually owned by such party, and in no event shall either the Tuesday Morning Seller, Friday Morning Seller or Tuesday Morning Inc. Seller be deemed to make representation or warranties, or undertake any agreement or obligation whatsoever, with respect to any portion of the Real Property not owned by such party.

2.1.2 Tangible Personal Property. Seller and Purchaser acknowledge and agree that at Closing, the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located on the Land that **(a)** are not used in connection with the operation, ownership and maintenance of the Land and Improvements (as opposed to the operation or management of the particular business of Seller on the Land), and **(b)** are used primarily in connection with the operation or management of the particular business of Seller on the Land (collectively, the "**Excluded Tangible Personal Property**") shall not transfer to Purchaser, as all of such Excluded Tangible Personal Property shall be retained by Seller for its continued operations pursuant to the Leases (as hereinafter defined); provided however, that all improvements, structures, building systems (such as heating, air conditioning, and mechanical systems), parking facilities and fixtures now or hereafter placed, constructed, installed or located at or on the Real Property (including any and all apparatuses, equipment and appliances affixed to the Real Property that cannot be removed without material harm to the Real Property) and used in connection with the ownership, operation, management or occupancy of the Real Property (as opposed to the operation or management of Seller's particular business on the Land), shall be deemed a component of the Improvements (the "**Tangible Personal Property**").

2.1.3 Intangible Personal Property. All of Seller's right, title and interest, if any, in the following intangible personal property related to the Real Property and the Improvements: the plans and specifications and other architectural and engineering drawings for the Improvements, if any, to the extent assignable and in Seller's possession as of the Effective Date and at no cost to Seller; warranties, to the extent assignable and in Seller's possession as of the Effective Date and at no cost to Seller; governmental permits, approvals and licenses, if any, to the extent assignable and in Seller's possession as of the Effective Date and at no cost to Seller; (all of the items described in this **Section 2.1.3** collectively referred to as the "**Intangible Personal Property**"). Tangible Personal Property and Intangible Personal Property shall not, in any event whatsoever, be deemed or constructed to include any trade name, mark or other identifying material that includes the name "Tuesday Morning", its subsidiaries and affiliates, or any derivatives thereof.

ARTICLE 3
EARNEST MONEY

3.1 Deposit and Investment of Earnest Money. On the Effective Date, Purchaser shall deposit the Earnest Money with Escrow Agent. Escrow Agent shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Seller and Purchaser, shall not commingle the Earnest Money with any funds of Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. Such account shall have no penalty for early withdrawal, and Purchaser accepts all risks with regard to such account. The Earnest Money shall become non-refundable to Purchaser upon the expiration of the Due Diligence Period (as defined below), except as expressly provided in this Agreement (including, **Sections 5.3**, **6.2**, **6.3** and **10.2**), provided, however, the Earnest Money shall be applied to the Purchase Price in the event Closing occurs. For purposes hereof, the "**Due Diligence Period**" shall expire at 5:00 pm Central Time on December 3, 2020.

3.2 Independent Consideration. If this Agreement is terminated for any reason, and Purchaser is entitled to receive a return of the Earnest Money pursuant to the terms hereof, the Escrow Agent shall first disburse to Seller $100.00 as independent consideration for Seller's performance under this Agreement ("**Independent Consideration**"), which shall be retained by Seller in all instances other than in the case of a Seller default existing beyond applicable grace, notice and cure period. Notwithstanding the foregoing, in the event this Agreement is terminated due to an uncured Seller default, Purchaser shall be entitled to a return of the entire Earnest Money, including the Independent Consideration.

3.3 Form; Failure to Deposit. The Earnest Money shall be in the form of a certified or cashier's check or the wire transfer to Escrow Agent of immediately available U.S. federal funds. If Purchaser fails to timely deposit any portion of the Earnest Money within the time periods required herein, Seller may terminate this Agreement by written notice to Purchaser delivered on or prior to the deposit of such Earnest Money by Purchaser, in which event any Earnest Money that has previously been deposited by Purchaser with Escrow Agent shall be immediately returned to Purchaser, and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

ARTICLE 4
DUE DILIGENCE

4.1 Due Diligence Materials Delivered. Seller shall make available to Purchaser the following (the "**Property Documents**") for each Property (provided that it is acknowledged and agreed by Purchaser (i) that Seller was and is not obligated to deliver (or create/prepare) the Property Documents to the extent that the same are not currently available in digital format and in Seller's reasonable possession, custody or control as of the Effective Date, and (ii) that Seller was and is not obligated to deliver any documents or information that is subject to attorney-client privilege:

4.1.1 Environmental, soils, air quality (mold) and hazardous substance reports, including, without limitation, Phase I Reports, Phase II Reports and any additional substance reports, if any;

4.1.2 Property inspection reports, including those covering engineering, structural/seismic, mechanical systems, building plans, and insurance loss run reports;

4.1.3 Agreements, warranties, and guaranties with respect to the Real Property;

4.1.4 Schedule of currently active building Service Contracts and copies of all currently active Service Contracts and any licensing agreements currently affecting the Property;

4.1.5 Leasing listing agreements and property management agreements from the last three (3) calendar years;

4.1.6 List of facility-related expenses incurred at the 6250 LBJ Property during the last twelve (12) months;

4.1.7 Utility bills (electricity, water, sewer, gas, fuel oil, trash and telephone/security lines) for the shorter of the last three (3) calendar years and the period of Seller's ownership;

4.1.8 Real and personal property tax assessment notices and bills for the Property; including supplementary notices and bills for the shorter of the last three (3) calendar years and the period of Seller's ownership;

4.1.9 Copies of Seller's most current title policies for the Property with the insured amount redacted; and

4.1.10 Schedule of capital improvements pertaining to the Property for the preceding twenty-four (24) months.

Seller shall notify Purchaser of any material changes to or errors in the Property Documents to the extent Seller obtains knowledge thereof and Seller shall provide updated materials (if any) in such event.

4.2 **Physical Due Diligence**. Commencing on the Effective Date and continuing until the Closing, Purchaser and its agents and representatives shall have reasonable access to the Property at all reasonable times during normal business hours, for the purpose of conducting reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, provided that (a) Purchaser must give Seller one (1) full Business Day's prior telephone or written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent may not be unreasonably withheld), (b) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place (and Purchaser and its contractors, agents and representatives shall maintain during the pendency of this Agreement) (1) commercial general liability insurance with limits of at least $2,000,000 for bodily or personal injury or death, (2) property damage insurance in the amount of at least $1,000,000, and (3) workers' compensation insurance for its activities on the Property in accordance with applicable law, all covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Property, which insurance shall (A) name as additional insureds thereunder Seller and such other parties holding insurable interests as Seller may designate, and (B) be primary non-contributory and be written by a reputable insurance company licensed to issue policies in the State of Texas, and (c) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in **Sections 4.7** and **4.8** below. Notwithstanding the foregoing, Purchaser shall be permitted to conduct a Phase II Environmental Site Assessment and any other additional testing if recommended by Purchaser's Phase I Environmental Site Assessment. Purchaser shall bear the cost of all such inspections or tests, which obligation shall survive the termination of this Agreement. Subject to the provisions of **Section 4.5** hereof, Purchaser or Purchaser's representatives may communicate with any governmental authority **(aa)** for the sole purpose of gathering information in connection with the transaction contemplated by this Agreement; provided, however, Purchaser must contact Seller at least two (2) full Business Days in advance by telephone or in writing to inform Seller of Purchaser's intended communication with any governmental authority and to allow Seller the opportunity to participate in such communication if Seller desires at a mutually agreeable time between Purchaser and Seller, or **(bb)** to the extent required by applicable laws. As used in this Section, "communicate" and "communication" shall mean the initiation of, response to, or sharing or exchange of information, knowledge or messages, whether by oral, written or electronic methods or media, or by any other means for the purpose of knowingly subverting the provisions of this Section regarding Purchaser's obligations to provide Seller with prior notice of such communication and Seller's ability to participate in such communication.

4.3 **Reports**. As additional consideration for the transaction contemplated herein, following termination of this Agreement for any reason other than Seller default existing beyond applicable grace, notice and cure periods, Purchaser shall provide to Seller promptly following Seller's written request, copies of any third party-prepared final environmental site assessments, property condition reports, title reports, surveys, zoning reports and other final studies and reports about the Real Property prepared by or for or otherwise obtained by, Purchaser or Purchaser's engineers, contractors and environmental consultants in connection with Purchaser's due diligence (collectively, the "**Reports**" and, individually, a "**Report**"). Any such deliveries to Seller shall be made at no cost to Purchaser and without any representation or warranty of any kind, including, without limitation, as to the accuracy or completeness of any such materials, and with no right of Seller to rely thereon without the consent of the applicable third party. Seller acknowledges and agrees that Purchaser has not made any representation or warranty in connection with the delivery of such Reports or other materials and the delivery of such Reports shall not establish a contractual relationship with Seller and no third-party benefits have been or shall be expressly or impliedly established. Notwithstanding anything herein to the contrary, Purchaser shall not be required to provide to Seller any **(aa)** attorney-client privileged communications, or **(bb)** proprietary or confidential work product and information (such as drafts, internal valuation studies, internal memoranda, financial projections, budgets and internal appraisals), or **(cc)** any other information that is not a final report or study obtained by Purchaser from a third party; provided however, that if this Agreement terminates or expires for any reason other than a Seller default beyond applicable notice and cure periods, Purchaser shall, subject to Purchaser's document retention policies, destroy (and certify to Seller the destruction of) such materials to the extent such materials contain or are based upon confidential information. Purchaser's obligation to deliver the Property Documents and the Reports to Seller shall survive the termination of this Agreement (not to exceed two (2) years) but shall not survive Closing.

4.4 **Service Contracts**. Purchaser and Seller acknowledge and agree that as a result of the nature of this transaction as a sale and leaseback to Seller pursuant to the terms of the Leases (as defined below), Seller will retain certain contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply, electric utility service, and equipment rental contracts (collectively, the "**Service Contracts**"), in its capacity as the tenant under the Leases, and such Service Contracts will not be terminated by Seller, or assumed by Purchaser, on the Closing Date. Any Service Contracts shall be held solely in the name of Seller (and not binding upon Purchaser or the Real Property), as tenant under the Leases, during the term of the Leases, and shall be terminated by Seller prior to the expiration of the Leases; provided however, that such Service Contracts shall be assigned, amended or terminated by Seller at Closing pursuant to the terms and conditions of **Section 7.9**.

4.5 **Proprietary Information; Confidentiality**. Purchaser acknowledges that the Property Documents are and shall remain proprietary and confidential and will be delivered to Purchaser solely to assist Purchaser in evaluating the Property. The term confidential or proprietary information does not include any information that Purchaser can reasonably establish (i) at the time of disclosure or thereafter is available to the public other than as a result of a disclosure by Purchaser or its representatives, (ii) is already in Purchaser's possession or becomes available to Purchaser on a non-confidential basis from a source other than Seller or its representatives, provided that, such source is not known to Purchaser after reasonable inquiry to be bound by an obligation of confidentiality to Seller or its affiliates or otherwise prohibited from transmitting the information to Purchaser by a contractual, legal or fiduciary obligation, or (iii) has been independently developed by Purchaser or its representatives without reference to or reliance upon the confidential or proprietary information and without otherwise violating your obligations hereunder. Purchaser shall not disclose the contents to any person other than to those persons who are responsible for evaluating Purchaser's acquisition or financing of the Property, including Purchaser's investors, and those who have agreed to preserve the confidentiality of such information as required hereby (collectively, "**Permitted Outside Parties**"). Notwithstanding the foregoing, Purchaser may disclose such contents as (a) expressly required under applicable laws or (b) expressly required by appropriate written judicial order, subpoena or demand issued by a court of competent jurisdiction (but will first give Seller written notice of the requirement and will cooperate with Seller so that Seller, at its expense, may seek an appropriate protective order and, in the absence of a protective order, Purchaser may disclose only such content as may be necessary to avoid any penalty, sanction, or other material adverse consequence, and Purchaser will use reasonable efforts to secure confidential treatment of any such content so disclosed). Purchaser shall not divulge the contents of the Property Documents and other information except in strict accordance with the standards set forth in this **Section 4.5**. In permitting Purchaser to review the Property Documents or any other information, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third-party benefits or relationships of any kind, either express or implied, have been offered, intended or created. Purchaser's obligations under this **Section 4.5** shall survive the termination of this Agreement for a period of one (1) year but shall not survive Closing. Notwithstanding anything in this Agreement to the contrary, any confidentiality obligations or liabilities of Purchaser to Seller, shall automatically terminate (and not survive) upon Closing.

4.6 **No Representation or Warranty by Seller**. Purchaser acknowledges that, except for the representations and warranties by Seller expressly set forth in this Agreement and any document executed by Seller and delivered to Purchaser at Closing (collectively, the "**Seller Undertakings**"), Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents were prepared by third parties other than Seller. Subject to the Seller Undertakings, Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents, or in any other written or oral communications transmitted or made available to Purchaser. Subject to the Seller Undertakings, Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. Subject to the Seller Undertakings, Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and are providing the Property Documents solely as an accommodation to Purchaser.

4.7 **Purchaser's Responsibilities**. In conducting any inspections, investigations or tests of the Property and/or Property Documents, Purchaser and its agents and representatives shall: (a) not interfere with the operation and maintenance of the Property by Seller; (b) not damage any part of the Property or any personal property owned by Seller; (c) not injure or otherwise cause bodily harm to Seller or its agents, guests, tenants, invitees, contractors and employees; (d) comply with all applicable laws; (e) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property by Purchaser and its agents and representatives; (f) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (g) repair any damage to the Real Property resulting directly from any such inspection or tests; and (h) not reveal or disclose prior to Closing any Property Documents to anyone other than the Permitted Outside Parties, in accordance with the confidentiality standards set forth in **Section 4.5** above. Notwithstanding anything in this Agreement to the contrary, Purchaser shall have no obligation to repair any damage to the extent caused by Seller's negligence or willful misconduct, or to remediate, contain, abate or control any materials not placed on or introduced to the Property by Purchaser or its agents and representatives (except to the extent any action of Purchaser or its Representatives disturbs any such existing materials in a manner which causes damage or contamination), or to repair or restore any latent condition discovered by Purchaser or its consultants, except to the extent any action by Purchaser or its Representatives exacerbates such condition. Purchaser's obligations under this **Section 4.7** shall survive the termination of this Agreement but shall not survive Closing, except and only to the extent such damage caused by Purchaser materially and adversely affects Seller's post-Closing operations at the Property, in which case Purchaser shall perform such work after Closing.

4.8 **Purchaser's Agreement to Indemnify**. PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER FROM ANY AND ALL LOSSES, COSTS, LIENS, CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES, EXPENSES AND LIABILITY (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "**LOSSES**") INCURRED BY SELLER, THAT ARISE FROM OR OUT OF THE ACT OR OMISSION OF PURCHASER OR ITS AGENTS OR REPRESENTATIVES IN CONNECTION WITH PURCHASER'S INSPECTIONS OR TESTS PERMITTED UNDER THIS AGREEMENT OR ANY VIOLATION BY PURCHASER, ITS AGENTS, REPRESENTATIVES, OF THE PROVISIONS OF SECTION 4.2 OR SECTION 4.7; PROVIDED, HOWEVER, THE INDEMNITY SHALL NOT EXTEND TO PROTECT SELLER FROM LOSSES RESULTING FROM (A) ANY PRE-EXISTING CONDITION MERELY DISCOVERED BY PURCHASER (I.E., LATENT ENVIRONMENTAL CONTAMINATION), SO LONG AS PURCHASER'S ACTIONS DO NOT AGGRAVATE OR EXACERBATE ANY SUCH PRE-EXISTING CONDITION, OR (B) THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SELLER OR THEIR RESPECTIVE

EMPLOYEES, AGENTS, OR REPRESENTATIVES. THIS INDEMNITY PROVISION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR A PERIOD OF TWO (2) YEARS.

ARTICLE 5
TITLE AND SURVEY

5.1 Title Commitment and Survey. Seller will use reasonable diligence to cause to be delivered to Purchaser within ten days after the Effective Date (i) Commitments for Title Insurance with hyperlinked copies of all recorded instruments affecting each Tract and recited as exceptions in the Commitments for Title Insurance (collectively, the "**Commitments**") and (ii) a copy of the most recent survey of each Tract in Seller's possession (the "**Survey**"). If Purchaser or the Title Company requires a new survey of any Tract for any reason, then Purchaser, at Purchaser's cost and within thirty (30) days after the Effective Date, shall obtain a new survey ("**New Survey**") of such Tracts made on the ground by a registered professional land surveyor that conforms to the requirements of an ALTA/ACSM minimum standard detail survey. If Purchaser has an objection to items disclosed in any Commitment or Survey, then Purchaser may give Seller written notice of its objections for a period of five (5) days after receipt of the latter of all of the Commitments and Surveys, but in any event prior to the expiration of the Due Diligence Period. If Purchaser gives timely written notice of its objections, then Seller may, but has no obligation to, cure those objections. Seller shall utilize reasonable diligence to cure any errors in the Commitments, provided Seller has no obligation to expend any money, to incur any contractual or other obligations, or to institute any litigation in pursuing its efforts other than to remove at Closing: **(a)** liens securing a mortgage, deed of trust or trust deed evidencing an indebtedness of Seller; **(b)** judgment liens against Seller; **(c)** tax liens; **(d)** broker's liens; **(e)** mechanics liens arising by, through or under Seller; and **(f)** any other monetary liens arising by, through or under Seller (collectively, "**Seller Mandatory Cure Items**"). If any objection is not satisfied, then Purchaser may elect on or before expiration of the Due Diligence Period, as its sole and exclusive remedy to either: (i) terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser, and neither party will have any further rights or obligations pursuant to this Agreement, other than as set forth herein with respect to rights or obligations that survive termination; or (ii) waive the unsatisfied objection (which shall thereupon become a Permitted Exception) and proceed to Closing. Any exception to title not objected to by Purchaser in the manner and within the time period specified in this **Section 5.1** shall be deemed accepted by Purchaser. The phrase "**Permitted Exceptions**" means those exceptions to title set forth in the Commitments or Surveys and that have been accepted or deemed accepted by Purchaser, other than Seller Mandatory Cure Items. The failure of Seller to deliver a Commitment or a Survey satisfying the requirements of this **Section 5.1** will not under any circumstances extend the period for review of the Commitments or Surveys beyond the Due Diligence Period, and Purchaser's sole and exclusive remedy for Seller's failure, if any, shall be to terminate this Agreement before the expiration of the Due Diligence Period, in which case the Earnest Money shall be returned to Purchaser. Purchaser shall notify Seller in writing of any failure of any Commitment or Survey to satisfy the requirements of this **Section 5.1** within five (5) days after the Commitments and Surveys are received by Purchaser, and if Purchaser fails to do so, then they shall be deemed to satisfy these requirements. If Purchaser obtains a New Survey and the New Survey shows exceptions not previously shown on the applicable Survey, or if after the issuance of the Title Commitment, the Title Company updates the Title Commitment to include a new exception ("**New Exceptions**"), Seller shall be obligated to cure such New Exceptions to the extent any constitute Seller Mandatory Cure Items, otherwise such New Exceptions shall be deemed Permitted Exceptions unless they are a result of a Seller breach under **Section 6.1.3** hereof.

5.2 Intentionally Omitted.

5.3 Delivery of Title Policy at Closing. In the event that the Title Company does not unconditionally commit at Closing to issue to Purchaser an owner's title policy insuring Purchaser's indefeasible fee simple title to the Real Property in the amount of the Purchase Price, subject only to the Permitted Exceptions (the "**Title Policy**"), then Purchaser shall have the right, as its sole and exclusive remedy, to terminate this Agreement, in which case the Earnest Money shall be immediately returned to Purchaser and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement.

ARTICLE 6
OPERATIONS AND RISK OF LOSS

6.1 Ongoing Covenants and Operations. From the Effective Date through Closing:

6.1.1 New Contracts. Seller will not amend any existing contract or agreement or enter into any new contract or agreement that will be an obligation of, or binding upon, Purchaser or the Property (as opposed to being binding upon Seller only) subsequent to Closing. Seller may enter into any contracts desired by Seller in the ordinary course of business that will not be binding upon Purchaser or the Property after Closing. On or prior to Closing, Seller shall either terminate or assign all contracts (including any Service Contracts) that would be binding upon Purchaser or the Property pursuant to the terms and conditions of **Section 7.9**, which terminations or assignments shall be effective no later than Closing. Seller shall pay all termination costs, liquidated damages, fees and/or expenses related thereto, it being understood and agreed that Purchaser shall have no liability or obligations for any Service Contracts.

6.1.2 **Maintenance of Improvements; Tangible Personal Property**. Subject to **Sections 6.2** and **6.3**, Seller shall operate and manage the Property in substantially the same manner consistent with the Seller's maintenance of the Improvements during Seller's period of ownership, provided, that, Seller shall not be obligated to make any capital repairs or replacements to the extent Seller does not deem such repairs or replacements necessary in its discretion. Seller makes no representation or warranty regarding the condition or state of repair of any or all of the Improvements, the Tangible Personal Property, or the Excluded Tangible Personal Property located at or on the Property and undertakes no obligation regarding the security of the Excluded Tangible Personal Property from and after the date of this Agreement, and Seller expressly disclaims any obligation to repair or replace any of the Excluded Tangible Personal Property following destruction or loss of any nature. Seller shall promptly (and in any event prior to Closing), deliver any Post-Effective Date Citation (as hereinafter defined) obtained by Seller. The parties acknowledge and agree that the terms and conditions of this paragraph shall not modify the post-Closing obligations of the parties as set forth in the Leases. Seller will not remove any Tangible Personal Property except as may be required for necessary repair or replacement (in Seller's discretion), and replacement shall be of equal or better quality as the removed item of Tangible Personal Property.

6.1.3 **No Assignment or Disposition**. Seller shall not sell, assign, alienate, lien, encumber or otherwise transfer all or any part of the Property or any interest therein. Without limitation of the foregoing, Seller shall not grant any easement, right of way, restriction, covenant or other comparable right affecting the Land or the Improvements without obtaining Purchaser's prior written consent (such consent not to be unreasonably withheld, condition or delayed). Except for this Agreement, Seller shall not enter into any agreement, arrangement or understanding for the sale of the Property, whether conditional or otherwise. Seller shall not apply for or consent to any change or modification with respect to the zoning development or use of any portion of the Property without Purchaser's prior written consent, which consent may be withheld in Purchase's sole and absolute discretion.

6.2 **Damage**. If, prior to Closing, the Property is damaged by fire or other casualty, Seller shall, in consultation with its insurance adjuster or other representative, reasonably estimate the cost to repair and the time required to complete repairs and will provide Purchaser written notice of such estimation (the "**Casualty Notice**") as soon as reasonably possible after the occurrence of the casualty.

6.2.1 **Material**. In the event of any Material Damage (as hereinafter defined) to or destruction of the Property or any portion thereof prior to Closing, either Seller or Purchaser may, at its option, terminate this Agreement by delivering written notice to the other on or before the expiration of ten (10) days after the date Seller delivers the Casualty Notice to Purchaser (and if necessary, the Closing Date shall be extended to give the parties the full ten (10) day period to make such election and to obtain insurance settlement agreements with Seller's insurers and agree upon repair and restoration of the affected Property). Upon any such termination, the Earnest Money shall be returned to Purchaser and the parties hereto shall have no further rights or obligations hereunder, other than those that by their terms survive the termination of this Agreement. If neither Seller nor Purchaser so terminates this Agreement within said ten (10) day period, then the parties shall be deemed to have waived the right to terminate under this **Section 6.2.1** and the parties shall proceed under this Agreement and close on schedule (subject to extension of Closing as provided above), and as of Closing, to the extent permitted by the terms of the applicable policies, Seller shall assign to Purchaser, without representation or warranty by or recourse against Seller, all of Seller's rights in and to any resulting insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction (or if such have not been awarded, all of Seller's right, title and interest to any claims and proceeds Seller has with respect to any casualty insurance policies relating to the Property in question, to the extent the same are assignable pursuant to the terms of the applicable policies; provided, however, should Seller's insurance policy prohibit the assignment of such proceeds, Seller shall provide Buyer with a credit to the Purchase Price at Closing in an amount equal to the proceeds.) and Purchaser shall assume full responsibility for all needed repairs, and Purchaser shall receive a credit at Closing for any deductible or self-insured amount under such insurance policies ("**Insurance Proceeds Assignment**"). For the purposes of this Agreement, "**Material Damage**" and "**Materially Damaged**" means damage that, in the opinion of an architect or other third-party contractor selected by Seller and reasonably approved by Purchaser, exceeds (or is estimated to exceed) $1,500,000.00 to repair.

6.2.2 **Not Material**. If a casualty occurs but the Real Property is not Materially Damaged, then neither Purchaser nor Seller shall have the right to terminate this Agreement pursuant to this **Section 6.2** (a "**Non-Material Pre-Closing Casualty**"), and subject to an Insurance Proceeds Assignment to Purchaser, the parties shall proceed to Closing subject to the terms of this Agreement, and such damage shall be restored by Purchaser post-Closing pursuant to (but only to the extent required by) the terms and conditions of the Leases, and Purchaser shall reasonably cooperate with Seller, in its capacity as tenant under the Leases, regarding such restoration, pursuant to the terms and conditions of the Leases. Notwithstanding the foregoing, if the insurance proceeds to be assigned pursuant to the Insurance Proceeds Assignment are less than the cost to repair the damage, in the opinion of an architect or other third-party contractor selected by Seller and reasonably approved by Purchaser, Purchaser shall receive a credit at Closing in the amount of such difference. The provisions of this **Section 6.2.2** shall survive Closing.

6.3 Condemnation. If proceedings in eminent domain are instituted with respect to the Property or any portion thereof that would materially and adversely interfere with the present use of the Real Property as currently utilized by Seller, or if such proceedings are instituted with respect to any portion of the Improvements, Purchaser may, at its option, by written notice to Seller given within ten (10) days after Seller notifies Purchaser in writing of such proceedings (and if necessary the Closing Date shall be automatically extended to give Purchaser the full ten (10) day period to make such election), either: (a) terminate this Agreement, in which case the Earnest Money shall be immediately returned to Purchaser and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement, or (b) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award, and Purchaser shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. If Purchaser does not give Seller written notice of its election within the time required above, then Purchaser shall be deemed to have elected option (b) above.

6.4 Insurance Policies. Seller shall, at its sole cost and expense, use commercially reasonably efforts to maintain Seller's existing insurance coverage with respect to the Property to the extent such policies remain available at similar rates as of the date hereof.

6.5 Leaseback. Commencing on the Closing Date, Purchaser, as landlord, shall lease to, as applicable, Tuesday Morning Partners, Ltd. and Tuesday Morning, Inc. (collectively, "Tuesday Tenant"), as tenant, all of the Land and Improvements pursuant to leases in substantially the form attached hereto as Exhibits E-1 and E-2 (the "Leases"). In the event of any conflict or inconsistency between the terms of this Agreement and the terms of either of the Leases, the terms of the applicable Lease shall prevail. The parties acknowledge and agree that the Leases attached hereto represent the final material monetary terms of such Leases (including all provisions relating to lease term and rent payable thereunder) but certain non-monetary provisions may be revised prior to Closing to a *de minimus* extent.

6.6 Notices. Seller covenants and agrees with Purchaser from the date hereof and until the Closing, to promptly notify Purchaser of all written notices received or sent by Seller relating to (i) violations of laws, ordinances, orders, directives, regulations or requirements issued by, filed by or served by, any governmental authority against or affecting any of the Property; or (ii) any default or violation under any of the Permitted Exceptions.

ARTICLE 7
CLOSING

7.1 Closing. The consummation of the transaction contemplated herein ("**Closing**") shall occur on the Closing Date by mail at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

7.2 Conditions to Parties' Obligation to Close. In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

7.2.1 Representations and Warranties and Covenants. The other party's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date as if specifically remade at Closing.

7.2.2 Covenants and Deliveries. As of the Closing Date, the other party shall have performed its obligations and covenants hereunder in all material respects and tendered all deliveries to be made by such party at Closing.

7.2.3 Actions, Suits, etc. Other than in connection with the Bankruptcy Proceeding, there shall exist no existing, pending or threatened in writing actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against the other party that would materially and adversely affect that party's ability to perform its obligations under this Agreement.

7.2.4 Title Policy. As a condition benefitting Purchaser only, the Title Company's shall be unconditionally committed to issuing the Title Policy pursuant to **Section 5.3**.

7.2.5 **Bankruptcy Court Sale Approval**. Seller and certain affiliates are currently debtors and debtors-in-possession in Chapter 11 proceedings in The United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**") under the consolidated case styled *In re: Tuesday Morning Corporation, et al.,* Case number 20-31476-HDH-11 (the "**Bankruptcy Proceeding**"). Seller's and Buyer's obligations hereunder are subject to (i) no order or determination being entered or withheld by the Bankruptcy Court that would materially impede the Closing from occurring by the Closing Date ("**Court Intervention**"); (ii) entry of a final, non-appealable order (a "**Plan Confirmation Order**") confirming a plan of reorganization proposed by the Seller (the "**Reorganization Plan**") and (iii) the effectiveness of the Reorganization Plan.

If any condition to a party's obligation to proceed with the Closing hereunder (such party, the "**Performing Party**") has not been satisfied as of the Closing Date (or such earlier date as is provided herein, and in the case of a Court Intervention, the date of the occurrence of Court Intervention), subject to any applicable notice and cure periods provided in **Sections 10.1** and **10.2**, such party may, in its sole discretion, terminate this Agreement by delivering written notice (a "**Condition Failure Termination Notice**") to the other party (the "**Non-Performing Party**") on or before the Closing Date (or such earlier date as is provided herein), or elect to close (or to permit any such earlier termination deadline to pass) notwithstanding the non-satisfaction of such condition, in which event the Performing Party shall be deemed to have waived any such condition (provided that neither party may waive the condition set forth in **Section 7.2.5** hereof). In the event the Performing Party elects to close (or to permit any such earlier termination deadline to pass), notwithstanding the non-satisfaction of such condition, the Performing Party shall be deemed to have waived said condition, and there shall be no liability on the part of the Non-Performing Party for breaches of representations and warranties of which the Performing Party had knowledge prior to Closing. The failure of a condition precedent to Closing that has not been satisfied on or prior to Closing through no act or omission of the Non-Performing Party in violation of this Agreement shall not be a default hereunder but shall not limit the right of the Performing Party to terminate this Agreement as a result thereof. Further, should the Performing Party elect to terminate this Agreement pursuant to this paragraph, the Performing Party shall be entitled to the Earnest Money and Independent Consideration upon termination; provided, however, if the conditions set forth in Section 7.2.5 are not satisfied and the Agreement is terminated, Buyer shall be entitled to the Earnest Money and Independent Consideration.

Notwithstanding the foregoing, in the event that, **(a)** prior to the Closing, Purchaser obtains actual knowledge of information (from whatever source, including, without limitation, as a result of Purchaser's due diligence tests, investigations and inspections of the Property, by disclosure from Seller or Seller's agents and employees or otherwise) that renders any of Seller's representations and warranties materially untrue or incorrect, and **(b)** Purchaser promptly delivers a Condition Failure Termination Notice as a result thereof, then Seller shall have seven (7) Business Days following receipt of such Condition Failure Termination Notice ("**Seller's Cure Period**") in which to take all steps necessary in Seller's reasonable estimation to render such representations and warranties materially true and correct; provided, however, the Seller's Cure Period shall automatically extend the Closing Date to the extent such Condition Failure Termination Notice is sent less than seven (7) Business Days prior to the scheduled Closing Date. If, prior to the expiration of Seller's Cure Period, Seller causes such representations to be materially true and correct, then Purchaser's Condition Failure Termination Notice shall be deemed null and void. However, if, as of the expiration of Seller's Cure Period, Seller has not rendered such representation and warranty materially true and correct, this Agreement shall terminate as set forth above and Purchaser shall be entitled to the Earnest Money and Independent Consideration.

7.3 **Seller's Deliveries in Escrow**. As of or prior to the Closing Date, Seller shall deliver in escrow to Escrow Agent the following:

7.3.1 **Deed**. A special warranty deed (or, at Purchaser's request, multiple deeds) in the form of Exhibit B hereto, executed and acknowledged by Seller, conveying to Purchaser Seller's fee interest in the Real Property (the "**Deed**");

7.3.2 **Bill of Sale and Assignment Agreement**. A Bill of Sale and Assignment Agreement in the form of Exhibit C hereto (the "**Assignment**"), executed by Seller vesting in Purchaser Seller's right, title and interest in and to the property described therein free of any claims, except for the Permitted Exceptions to the extent applicable;

7.3.3 **FIRPTA**. A Foreign Investment in Real Property Tax Act affidavit in the form of Exhibit D hereto executed by Seller;

7.3.4 **Authority**. Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy, it being expressly agreed that Seller shall have no obligation to provide evidence of authority to Purchaser;

7.3.5 **Leases**. The Leases, executed by Tuesday Morning Partners, Ltd. and Tuesday Morning, Inc., as applicable; and

7.3.6 **Owner's Affidavit**. An Owner's Affidavit and a "gap" affidavit, each, executed by Seller and in form and substance reasonably acceptable to the Title Company and Seller, but sufficient to delete the standard exceptions to the Title Policy, including, without limitation, the exceptions related to the parties in possession (other than the Leases) and mechanic's liens.

7.3.7 **Additional Documents**. Any additional documents that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transactions contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement).

7.4 **Purchaser's Deliveries in Escrow**. As of or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

7.4.1 **Bill of Sale, Assignment and Assumption**. The Assignment, executed and acknowledged by Purchaser;

7.4.2 **Leases**. The Leases, each executed by Purchaser; and

7.4.3 **Additional Documents**. Any additional documents that Seller, Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement).

7.5 **Closing Statements**. As of or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent executed closing statements consistent with this Agreement in the form required by Escrow Agent.

7.6 **Purchase Price**. At or before 2:30 p.m. (local time at the Real Property) on the Closing Date, Purchaser shall deliver to Escrow Agent the Purchase Price, less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee on the Closing Date, then the closing statements and related prorations will be revised as necessary.

7.7 **Possession**. Seller shall deliver possession of the Property to Purchaser at the Closing subject only to the Permitted Exceptions and the Leases.

7.8 **Delivery of Books and Records**. On or prior to Closing, Seller shall deliver to the offices of Purchaser's property manager or to the Real Property to the extent in Seller's possession or control: copies of all maintenance records; plans and specifications; licenses, permits and certificates of occupancy; provided, however, the originals of the same shall not be delivered until termination of the applicable Lease.

7.9 **Termination or Assignment of Service Contracts**. Seller shall deliver to Purchaser termination agreements or other evidence reasonably satisfactory to Purchaser that all Service Contracts that would be binding upon Purchaser or the Property have either been (a) terminated effective upon the Closing Date and at no cost to Purchaser or to the Property, or (b) assigned to Seller in its capacity as tenant of the Property or amended to clarify that Seller is no longer the owner of the Property, without any right of the applicable service provider to make a claim against Purchaser or the Property.

ARTICLE 8
PRORATIONS, DEPOSITS, COMMISSIONS

8.1 **Prorations**. At Closing, the following items shall be prorated as of the Closing Date on an accrual basis with all items of income and expense for the Property (a) accruing prior to the Closing Date being borne by Seller, and (b) accruing from and after (and including) the Closing Date being borne by Purchaser: fees and assessments; real and personal ad valorem taxes ("**Taxes**"); and any assessments by private covenant for the then-current calendar year of Closing. Specifically, the following shall apply to such prorations:

8.1.1 **Taxes**. If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing and shall be promptly reprorated upon the issuance of final bills therefor. Prior to or at Closing, Seller shall pay or have paid all Taxes that are due and payable prior to or on the Closing Date.

8.1.2 **Other Costs**. As a result of the Leases, utilities, operating expenses, and other such amounts attributable to the Improvements shall not be prorated, and Seller shall remain liable for such amounts to the extent accruing during the term of the Leases (or prior to Closing).

8.2 **Closing Costs**. Closing costs shall be allocated between Seller and Purchaser in accordance with **Section 1.2**.

8.3 **Final Adjustment After Closing**. If final bills are not available or cannot be issued prior to Closing for any item being prorated under **Section 8.1**, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

8.4 **Commissions**. Seller shall be responsible to the Broker for a real estate sales commission at Closing (but only in the event of a Closing in strict accordance with this Agreement) pursuant to a separate written agreement (including any real estate sales commission applicable to the Leases, if any). Purchaser shall be responsible to Lee & Associates for a real estate sales commission at Closing pursuant to a separate written agreement. Under no circumstances shall Seller owe a commission or other compensation directly to any other broker, agent or person. Other than as stated above in this **Section 8.4**, Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby or the Leases, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any other person or entity claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 **Seller's Representations and Warranties**. Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing Date that:

9.1.1 **Organization and Authority**. Seller has been duly organized, is validly existing, and is in good standing in the state in which it was formed. Subject to entry of the Plan Confirmation Order and effectiveness of the Reorganization Plan, this Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

9.1.2 **Conflicts and Pending Actions**. To Seller's knowledge, there is no agreement to which Seller is a party or that is binding on Seller under which Seller will be in default as a result of entering into or consummating this Agreement. To Seller's knowledge, other than in connection with the Bankruptcy Proceeding there is no litigation, action or proceeding pending either **(a)** against Seller, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement, or **(b)** relating to the Property by reason of Seller's ownership or operation of the Property or any portion thereof. Except for those rights previously disclosed to Purchaser, no rights of first offer or rights of first refusal regarding the Property exist under the organizational documents of Seller or under any agreement by which Seller or the Property is or may be bound or affected.

9.1.3 **Condemnation**. Except as may be reflected by the Property Documents or otherwise disclosed in writing to Purchaser, Seller has received no written notice from any governmental authority having jurisdiction over the Real Property that it is presently the subject of any condemnation or similar proceeding.

9.1.4 **Prohibited Persons and Transactions**. Seller represents and warrants to Purchaser that Seller is currently in compliance with and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

9.1.5 **Compliance With Laws**. Seller has not received written notice from any governmental or quasi-governmental authority of any violations of any laws affecting or applicable to any or all of the Property which remain uncured.

9.1.6 **Employees**. There is no bargaining unit or union contract relating to any employees of Seller.

9.1.7 **Intentionally Omitted**.

9.1.8 **ERISA**. Neither the execution and delivery of this Agreement nor any of the transactions contemplated thereunder involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c) of the Code.

9.1.9 **Property Documents**. To Seller's knowledge, the Property Documents delivered to Purchaser pursuant to Section 4.1 are correct copies, in all material respects, of the Property Documents in Seller's possession and control.

9.1.10 **Tax Appeals**. Except as disclosed in the Property Documents, Seller has not **(a)** submitted an application for the creation of any special taxing district affecting the Property, or annexation thereby, or inclusion therein, or **(b)** received written notice that any governmental or quasi-governmental agency or authority intends to impose or increase any special or other assessment against the Property, or any part thereof, including assessments attributable to revaluations of the Property. Except as disclosed in the Property Documents, there is no ongoing appeal with respect to taxes or special assessments on the Property for any year, and any consultants engaged to perform work with respect to appeals of taxes or special assessments on the Property have been paid in full.

9.1.11 **Leases**. Other than the Permitted Exceptions and the Leases, there are no leases, licenses or occupancy agreements binding upon the Property.

9.1.12 **Hazardous Substances**. Except as disclosed in the Property Documents, to Seller's knowledge, Seller has not received any written notice from any governmental agency having jurisdiction over the Property advising Seller that the Property is in violation of any Environmental Laws.

9.1.13 **No Liens or Encumbrances**. Seller's ownership of the Property does not include any tenants-in-common ownership, undivided interest ownership nor fractional ownership interest.

9.1.14 **Service Contracts**. To Seller's knowledge, the Service Contracts delivered to Purchaser as a part of the Property Documents are the only Service Contracts currently affecting the Property. Seller has not received nor given any written notice of material default under any Service Contract with respect to a material default that remains uncured as of the date hereof. To Seller's knowledge, the list of Service Contracts is attached hereto as Exhibit F, is true, correct and complete in all material respects as of the date of this Agreement.

9.2 **Purchaser's Representations and Warranties**. Purchaser represents and warrants to Seller that:

9.2.1 **Organization and Authority**. Purchaser has been duly organized, is validly existing, and is in good standing in jurisdiction in which it was formed. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

9.2.2 **Conflicts and Pending Action**. There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

9.2.3 **Prohibited Persons and Transactions**. Purchaser represents and warrants to Seller that Purchaser is currently in compliance with and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

9.3 Survival of Representations and Warranties. The representations and warranties set forth in this Article 9 are made as of the Effective Date and are remade as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the "**Survival Period**"). Terms such as "**to Seller's knowledge**," "**to the best of Seller's knowledge**" or like phrases mean the actual present and conscious awareness or knowledge of Phillip D. Hixon, the Executive Vice President of Store Operations for Seller, with oversight responsibility for all material matters relating hereto ("**Seller's Representative**"), without any duty of inquiry or investigation; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Seller's Representative, or any officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Terms such as "**to Purchaser's knowledge**," "**to the best of Purchaser's knowledge**" or like phrases mean the actual present and conscious awareness or knowledge of Vince Reyna ("**Purchaser 's Representative**"), without any duty of inquiry or investigation; provided that so qualifying Purchaser's knowledge shall in no event give rise to any personal liability on the part of Purchaser's Representative, or any officer or employee of Purchaser, on account of any breach of any representation or warranty made by Purchaser herein. Said terms do not include constructive knowledge, imputed knowledge, or knowledge Seller or Purchaser, as applicable, or such persons do not have but could have obtained through further investigation or inquiry. Purchaser shall be deemed to have knowledge of all matters contained in the Property Documents or any final third-party reports obtained by Purchaser. No broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after and gives written notice of such breach to the other party before the end of the Survival Period and files such action on or before the expiration of the Survival Period, and (2) neither party shall have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to such party on account of such breach (individually or when combined with damages from other breaches) equals or exceeds **$50,000.00** (the "**Floor**"), in which event the excess amount of such claims above the Floor shall be actionable, subject to the limitations of Seller's liability set forth in this **Section 9.3**. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had knowledge prior to Closing. Notwithstanding any other provision of this Agreement, any agreement contemplated by this Agreement, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser will be limited to an amount equal to **$750,000.00** (the "**Cap**"). Purchaser agrees that, with respect to any alleged breach of representations and warranties contained in Article 9 of this Agreement that is not timely raised by Purchaser to Seller in a written notice prior to the expiration of the Survival Period (in accordance with the terms of this **Section 10.2**), the maximum liability of Seller for all such alleged breaches is limited to **$100.00**. Notwithstanding anything herein to the contrary, in no event shall the Floor or the Cap apply to (i) Seller's obligations under Article 8, (ii) Seller's obligations to turn over insurance proceeds, if any, post-Closing, pursuant to Article 6, or (iii) liability of Seller for Seller's fraud (including fraudulent concealment) as finally determined by a court of competent jurisdiction. Any breach of a representation or warranty or covenant that is discovered prior to Closing shall be governed by Article 10.

ARTICLE 10
DEFAULT AND REMEDIES

10.1 Seller's Remedies. If Purchaser fails to consummate the purchase of the Property pursuant to this Agreement for any reason except failure by Seller to perform hereunder, and in each case such default is not cured by the earlier of the fifth (5^{th}) day after written notice thereof from Seller or the Closing Date (except no notice shall be required if Purchaser fails to close on the Closing Date), then Seller shall be entitled, as its sole and exclusive remedy, to terminate this Agreement and recover the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default in its obligation to consummate the purchase of the Property pursuant to the terms and conditions of this Agreement are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. In all other events Seller's remedies shall be limited to those described in **Sections 4.8**, **8.4**, **10.3** and **10.4** hereof, and nothing contained herein shall be deemed to limit Purchaser's indemnity or other obligations which expressly survive termination of this Agreement. Notwithstanding the foregoing, in the event Purchaser defaults in any of its post-closing obligations or any obligations that survive Closing or a termination of this Agreement, Seller shall have all of its remedies at law and in equity on account of such default. IN NO EVENT SHALL PURCHASER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, OWNERS OR AFFILIATES, ANY OFFICER, DIRECTOR, MANAGER, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.2 Purchaser's Remedies. If Seller fails to consummate the sale of the Property pursuant to this Agreement or otherwise defaults on its obligations hereunder at or prior to Closing for any reason except failure by Purchaser to perform hereunder and in each case such default is not cured by the earlier of the fifth (5^{th}) day after written notice thereof from Purchaser or the Closing Date (except no notice shall be required if Seller fails to close on the Closing Date), Purchaser may elect, as its sole remedies, either to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money and the Independent Consideration, in which event Seller shall promptly reimburse Purchaser in an amount not to exceed **$100,000.00** for any and all reasonable, third party costs actually paid or incurred by Purchaser to negotiate this Agreement, conduct its due diligence investigations and otherwise pursue the transactions contemplated hereby (including, attorneys' fees, fees of environmental and other consultants, and accountants' fees incurred by Purchaser in connection with this Agreement and any action hereunder or the Property), after receipt of invoices for such costs

(which obligation shall survive any termination of this Agreement), or (b) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price.

10.3 Attorneys' Fees. In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such claims.

10.4 Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Escrow Agent for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitment.

IN NO EVENT SHALL SELLER'S OR PURCHASER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS OR AFFILIATES, OR ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

ARTICLE 11
DISCLAIMERS, RELEASE AND INDEMNITY

11.1 Disclaimers By Seller. IT IS UNDERSTOOD AND AGREED THAT SELLER AND SELLER'S AGENTS OR EMPLOYEES HAVE NOT AT ANY TIME MADE AND ARE NOT NOW MAKING, AND THEY SPECIFICALLY DISCLAIM, ANY OTHER WARRANTIES, REPRESENTATIONS OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT AND ANY DOCUMENT EXECUTED BY SELLER AND DELIVERED TO PURCHASER AT CLOSING, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (A) MATTERS OF TITLE (OTHER THAN SELLER'S SPECIAL WARRANTY OF TITLE TO BE CONTAINED IN THE DEED), (B) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR IN THE VICINITY OF THE PROPERTY, (C) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER, AND GEOLOGIC FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE FAULTING, (D) WHETHER, AND TO THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, WETLANDS, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD, (E) DRAINAGE, (F) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING, (G) THE PRESENCE OF ENDANGERED SPECIES OR ANY ENVIRONMENTALLY SENSITIVE OR PROTECTED AREAS, (H) ZONING OR BUILDING ENTITLEMENTS TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT, (I) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC, (J) USAGES OF ADJOINING PROPERTY, (K) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF, (L) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF, (M) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS, (N) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, SURFACE IMPOUNDMENTS, OR LANDFILLS, (O) ANY OTHER MATTER AFFECTING THE STABILITY AND INTEGRITY OF THE PROPERTY, (P)THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY, (Q) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (R) THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS, (S) TAX CONSEQUENCES, OR (T) ANY OTHER MATTER OR THING WITH RESPECT TO THE PROPERTY.

Purchaser's signature and acknowledgement of the terms and provisions of this **Section 11.1**

11.2 **Sale "As Is, Where Is."** Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Property "**AS IS, WHERE IS, WITH ALL FAULTS**," except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Purchaser at Closing. Further, Purchaser acknowledges and agrees that Seller shall have no obligation whatsoever to remove, repair or otherwise account for any Tangible Personal Property located on or at the Property. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, AND ANY DOCUMENT EXECUTED BY SELLER AND DELIVERED TO PURCHASER AT CLOSING, PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER HAS NOT MADE AND IS NOT LIABLE FOR OR BOUND BY, ANY OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY DOCUMENTS PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, OR ANY PROPERTY MANAGER, REAL ESTATE BROKER, AGENT OR THIRD PARTY REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. EXCEPT WITH RESPECT TO ANY REPRESENTATION OR WARRANTY OF SELLER MADE HEREUNDER, PURCHASER ACKNOWLEDGES THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY AND SHALL MAKE AN INDEPENDENT VERIFICATION OF THE ACCURACY OF ANY DOCUMENTS AND INFORMATION PROVIDED BY SELLER. PURCHASER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. PURCHASER ACKNOWLEDGES THAT SELLER HAS AFFORDED PURCHASER A FULL OPPORTUNITY TO CONDUCT SUCH INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMED NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NON-EXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY DOCUMENT EXECUTED BY SELLER AND DELIVERED TO PURCHASER AT CLOSING. EXCEPT WITH RESPECT TO ANY REPRESENTATION OR WARRANTIES OF SELLER OR ANY FRAUDULENT CONCEALMENT ON SELLER'S PART, UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL OR CONSTRUCTION DEFECTS OR ADVERSE ENVIRONMENTAL, HEALTH OR SAFETY CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. PURCHASER WAIVES ANY AND ALL RIGHTS OR REMEDIES IT MAY HAVE OR BE ENTITLED TO, DERIVING FROM DISPARITY IN SIZE OR FROM ANY SIGNIFICANT DISPARATE BARGAINING POSITION IN RELATION TO SELLER.

Purchaser's signature and acknowledgement of the terms and provisions of this **Section 11.2**

11.3 **Seller Released from Liability**. Purchaser acknowledges that it will and has had the opportunity to inspect the Property prior to Closing, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Purchaser deems necessary, and Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, whether arising before or after the Effective Date, and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("**CERCLA**"), regarding the condition, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines (collectively, "**Environmental Laws**"), and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property); provided however, that the terms of this sentence (and this paragraph) shall not apply to Seller's duties, liabilities and obligations, solely as tenant under the Leases, accruing from and after Closing pursuant to the Leases. Purchaser further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, whether arising before or after the Effective Date; provided however, that the terms of this sentence (and this paragraph) shall not apply to Seller's duties, liabilities and obligations, solely as tenant under the Leases, accruing from and after Closing pursuant to the Leases. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation; provided however, that the terms of this sentence (and this paragraph) shall not apply to Seller's duties, liabilities and obligations, solely as tenant under the Leases, accruing from and after Closing pursuant to the Leases. Notwithstanding anything in this Agreement to the contrary, **(a)** if Purchaser is named

as a party in any litigation or investigation brought by a third party (including a governmental or quasi-governmental entity) unrelated to Purchaser and Seller is not so named, then Purchaser may, to the extent permitted by law, interplead or implead Seller in such action so long as no claim of contribution or monetary relief is made by Purchaser against Seller; provided, however, that prior to the expiration of the Survival Period, Purchaser may bring claims in accordance with **Section 9.3** hereof, **(b)** the release described in this paragraph above applies to Purchaser and its successors and assigns only, and does not bind any third party; and **(c)** the terms of this paragraph shall not preclude Purchaser from raising in defense of any third party claims made against the Property or Purchaser after Closing which relate to conditions first existing, or actions taken, during the period of Seller's ownership of the Property, the fact that Purchaser was not the owner of the Property at the time such third party claim arose so long as no claim of contribution or monetary relief is made by Purchaser against Seller; provided however, that in no event shall this sentence (or this paragraph) be construed to waive, modify or limit any of **(i)** Purchaser's rights and remedies under the Leases with respect to matters arising from or after Closing, or **(ii)** Seller's duties, liabilities and obligations, under the Leases to the extent accruing from and after Closing. Notwithstanding any provision contained in this section to the contrary, this Section 11.3 shall not apply to any representation or warranty of Seller made in this Agreement or any other document executed and delivered by Seller at Closing.

Purchaser's signature and acknowledgement of the terms and provisions of this **Section 11.3**

11.4 **"Hazardous Materials" Defined**. For purposes hereof, "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.5 **Survival**. The terms and conditions of this Article 11 shall expressly survive the Closing and shall not merge with the provisions of any closing documents.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

ARTICLE 12
MISCELLANEOUS

12.1 **Parties Bound; Assignment**. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may assign its rights under this Agreement without the consent of Seller upon the following conditions: (a) the assignee of Purchaser must be (i) an entity controlling, controlled by, or under common control with Purchaser (a "**Purchaser Control Entity**"), or (ii) any entity in which one or more Purchaser Controlled Entities directly or indirectly is the general partner (or similar managing partner, member or manager) or owns more than 50% of the economic interests of such entity, (b) all of the Earnest Money must have been delivered in accordance herewith, (c) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, and (d) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at Closing.

12.2 **Headings**. The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

12.3 **Invalidity and Waiver**. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

12.4 **Governing Law; Jurisdiction; Venue**. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state in which the Real Property is located. EACH OF PURCHASER AND SELLER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DALLAS, STATE OF TEXAS, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER DOCUMENTS TO BE DELIVERED BY PURCHASER AND SELLER HEREUNDER SHALL BE LITIGATED EXCLUSIVELY IN SUCH COURTS. EACH OF PURCHASER AND SELLER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS OR ANY OTHER SIMILAR DEFENSE TO THE JURISDICTION OR VENUE OF SAID COURTS.

12.5 **Survival**. The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

12.6 **Entirety and Amendments**. This Agreement embodies the entire agreement between the parties and supersedes all other prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits hereto are incorporated herein by this reference for all purposes.

12.7 **Time**. Time is of the essence in the performance of this Agreement.

12.8 **Confidentiality; Press Releases**. Purchaser shall make no public announcement or disclosure of any information related to this Agreement to outside brokers or third parties, prior to Closing, without the prior written specific consent of Seller; provided, however, that Purchaser may, subject to the provisions of **Section 4.6**, make disclosure of this Agreement to its Permitted Outside Parties as necessary to perform its obligations hereunder and as may be required under laws or regulations applicable to Purchaser. It is understood and agreed that money damages may not be a sufficient remedy for any breach of this Section and that the Seller shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Purchaser further agrees not to raise, as a defense or objection to the request or granting of such relief, that any breach of this Section is or would be compensable by an award of money damages, and Purchaser agrees to waive any requirement for the security or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Section but shall be in addition to all other remedies available at law or equity to Seller. Purchaser also agrees to reimburse Seller and its representatives for all costs incurred by Seller and its representatives in connection with the enforcement of this Section (including, without limitation, legal fees in connection with any such litigation, including any appeals therefrom). The provisions of this Section shall survive Closing for a period of twelve (12) months.

12.9 **Notices**. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in **Section 1.3**. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by electronic mail. Notices shall be deemed properly delivered and received: (i) the same day when personally delivered; or (ii) one day after deposit with a nationally recognized overnight courier; or (iii) the same day when sent by email. A party's address may be changed by written notice to the other party. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

12.10 **Construction**. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction - to the effect that any ambiguities are to be resolved against the drafting party - shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.11 **Calculation of Time Periods; Business Day**. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. local time at the Real Property. As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday or legal holiday for national banks in the city in which the Real Property is located.

12.12 **Execution in Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by email electronic counterparts (i.e., PDF counterparts) of the signature pages.

12.13 **No Recordation**. Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon Seller shall have the remedies set forth in **Section 10.1** hereof. In addition to any

such remedies, Purchaser shall be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit, and Purchaser's obligations pursuant to this **Section 12.13** shall survive any termination of this Agreement as a surviving obligation.

12.14 **Further Assurances**. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

12.15 **ERISA**. Under no circumstances shall Purchaser have the right to assign this Agreement to any person or entity owned or controlled by an employee benefit plan if Seller's sale of the Property to such person or entity would, in the reasonable opinion of Seller's ERISA advisors or consultants, create or otherwise cause a "prohibited transaction" under ERISA. In the event Purchaser assigns this Agreement or transfers any ownership interest in Purchaser, and such assignment or transfer would make the consummation of the transaction hereunder a "prohibited transaction" under ERISA and necessitate the termination of this Agreement then, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement.

12.16 **No Third Party Beneficiary**. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

12.17 **Reporting Person**. Purchaser and Seller hereby designate the Title Company as the "reporting person" pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

12.18 **Texas Real Estate License Act**. The Texas Real Estate License Act requires written notice to Purchaser from any licensed real estate broker or salesman who is to receive a commission that Purchaser should have an attorney of its own selection examine an abstract of title to the property being acquired or that Purchaser should be furnished with or should obtain a title insurance policy. Notice to that effect is, therefore, hereby given to Purchaser on behalf of the broker(s) identified in this Agreement, if any.

12.19 **DTPA Waiver**. IT IS THE INTENT OF SELLER AND PURCHASER THAT THE RIGHTS AND REMEDIES WITH RESPECT TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT SHALL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT. ACCORDINGLY, TO THE MAXIMUM EXTENT APPLICABLE AND PERMITTED BY LAW (AND WITHOUT ADMITTING SUCH APPLICABILITY), PURCHASER HEREBY WAIVES THE PROVISIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, CHAPTER 17, SUBCHAPTER 3 (OTHER THAN SECTION 17.555, WHICH IS NOT WAIVED), TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. FOR PURPOSES OF THE WAIVERS SET FORTH IN THIS AGREEMENT, PURCHASER HEREBY WARRANTS AND REPRESENTS UNTO SELLER THAT (A) PURCHASER HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, (B) PURCHASER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH SELLER REGARDING THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, (C) PURCHASER IS REPRESENTED BY LEGAL COUNSEL THAT IS SEPARATE AND INDEPENDENT OF SELLER AND SELLER'S LEGAL COUNSEL AND (D) PURCHASER HAS CONSULTED WITH PURCHASER'S LEGAL COUNSEL REGARDING THIS AGREEMENT PRIOR TO PURCHASER'S EXECUTION OF THIS AGREEMENT AND VOLUNTARILY CONSENTS TO THIS WAIVER.

[SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT
BY AND BETWEEN
Tuesday Morning Partners, Ltd., Tuesday Morning, Inc., and Friday Morning, LLC.

AND
PBV-14303 INWOOD ROAD, LP

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

SELLER:

TUESDAY MORNING PARTNERS, LTD.,
a Texas limited partnership

By: Days of the Week, Inc.,
a Delaware corporation
its General Partner

Date executed by Seller

December 7, 2020

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

FRIDAY MORNING, LLC,
a Texas limited liability company

By: Tuesday Morning, Inc.,
its Member

Date executed by Seller

December 7, 2020

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

TUESDAY MORNING, INC.,
a Texas corporation

Date executed by Seller

December 7, 2020

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

[Signatures Continue on Following Page]

PURCHASER:

PBV-14303 INWOOD ROAD, LP,
a Texas limited partnership

By: PBV-14303 Inwood Road GP, LLC
a Texas limited liability company
its General Partner

Date executed by Purchaser

December 3, 2020

By: /s/ Michael C. O'Malley
Michael C. O'Malley, *Manager*

JOINDER BY ESCROW AGENT

Escrow Agent has executed this Agreement in order to confirm that Escrow Agent has received and shall hold the Earnest Money required to be deposited under this Agreement and the interest earned thereto, in escrow, and shall disburse the Earnest Money, and the interest earned thereon, pursuant to the provisions of this Agreement.

CHICAGO TITLE INSURANCE COMPANY

Date executed by Escrow Agent

December 7, 2020

By: /s/ Pamela Medlin
Name: Pamela Medlin
Title: Escrow Officer

LIST OF EXHIBITS

EXHIBIT A

LEGAL DESCRIPTION OF LAND

4400-4404 SOUTH BELTWOOD PARKWAY, FARMERS BRANCH, TEXAS; 14621 INWOOD ROAD, ADDISON, TEXAS; 14639-14645 INWOOD ROAD, ADDISON, TEXAS; AND 14601-14603 INWOOD ROAD, ADDISON, TEXAS:

TRACT I: FEE SIMPLE

BEING a 1.556 acre (67,759 square foot) tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, Dallas County, Texas and being part of Lot 1 and part of Lot 2 of Inwood Park North, an addition to the Town of Addison, Dallas County, Texas, according to the plat recorded in Volume 79234, Page 1 Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with orange plastic cap stamped "P&C 100871" set for corner in the southwesterly line of Inwood Road (a 60 foot public right-of-way), said rod being South 16°49'00" East, a distance of 26.09 feet from the northeast corner of said Lot 1 and the southeast corner of Lot 3 of said Inwood Park North Addition;

THENCE South 16°49'00" East, along said southwesterly line of Inwood Road and the northeasterly line of said Lot 1, for a distance of 319.14 feet to a 1/2 inch iron rod with orange plastic cap stamped "P&C 100871" set for corner, said rod being the southeast corner of said Lot 1 and in the north line of a Texas Utilities Electric Company right-of-way;

THENCE South 89°49'46" West, departing said southwesterly line of Inwood Road and along the south line of said Lot 1 and said north line of Texas Utilities Electric Company right-of-way, passing the southwest corner of said Lot 1 and the southeast corner of aforementioned Lot 2 at a distance of 200.40 feet, continuing for a total distance of 223.15 feet to a 1/2 inch iron rod with orange plastic cap stamped "P&C 100871" set for corner;

THENCE North 16°49'00" West, departing the south line of said Lot 2 and traveling over and across said Lot 2, for a distance of 216.00 feet to an "x" cut in concrete set for corner;

THENCE South 89°49'46" West for a distance of 10.00 feet to an "x" cut in concrete set for corner;

THENCE North 00°10'14" West for a distance of 98.81 feet to a 1/2 inch iron rod found for a corner in the south line of a 50 foot access, utility and drainage easement as shown on aforementioned plat of Inwood Park North Addition;

THENCE North 89°49'46" East, along said south line of 50 foot access, utility and drainage easement, for a distance of 203.61 feet to the POINT OF BEGINNING and containing 1.556 acres, or 67,759 square feet of land, more or less.

TRACT II: FEE SIMPLE

BEING a 1.631 acre (71,041 square foot) tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, Dallas County, Texas and being part of Lot 3 of Inwood Park North, an addition to the Town of Addison, Dallas County, Texas, according to the plat recorded in Volume 79234, Page 1 Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with orange plastic cap stamped "P&C 100871" set for corner in the southwesterly line of Inwood Road (a 60 foot public right-of-way), said rod being the northeast corner of said Lot 3 and the southeast corner of Lot 2, Block A of Inwood Auto/Beverage Addition, an addition to the Town of Addison, Dallas County, Texas, according to the plat recorded in Instrument No. 200600248924 Official Public Records, Dallas County, Texas;

THENCE South 16°49'00" East, along said southwesterly line of Inwood Road and the northeasterly line of said Lot 3, for a distance of 351.14 feet to an "x" cut in concrete set for corner, said "x" being the northeast corner of a 50 foot access, utility and drainage easement as shown on aforementioned plat of Inwood ParkNorth Addition, said "x" also being North 16°49'00" West, a distance of 26.09 feet from the southeast corner of said Lot 3 and the northeast corner of Lot 1 of said Inwood Park North Addition;

THENCE South 89°49'46" West, departing said southwesterly line of Inwood Road and along the north line of said 50 foot access, utility and drainage easement, over and across said Lot 3 and parallel with the south line of said Lot 3, for a distance of 224.48 feet to a 1/2 inch iron rod found for corner;

THENCE North 16°49'00" West, departing said northerly line of 50 foot access, utility and drainage easement, for a distance of 216.67 feet to a 1/2 inch iron rod found for corner;

THENCE North 09°15'00" West for a distance of 97.87 feet to a 1/2 inch iron rod with yellow plastic cap stamped "KADLECK 3952" found for corner in the northerly line of said Lot 3 and the southerly line of aforementioned Lot 2 of Inwood Auto/Beverage Addition;

THENCE North 80°45'00" East, along said northerly line of Lot 3, and the southerly line of said Lot 2 of Inwood Auto/Beverage Addition, for a distance of 203.96 feet to the POINT OF BEGINNING and containing 1.631 acres, or 71,041 square feet of land, more or less.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

TRACT III: FEE SIMPLE

BEING all of Lot 1, Block A of Tuesday Morning Beltwood Addition, an addition to the City of Farmers Branch, Dallas County, Texas according to the plat recorded in Instrument No. 200600276647 Official Public Records, Dallas County, Texas and being part of Lots 1, 2 and 3 of Inwood Park North, an addition to the City of Addison, according to the plat recorded in Volume 79234, Page 1 Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described as follows:

BEGINNING at a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in the East line of said Tuesday Morning Addition at the Northwest corner of said Inwood Addition and the Southwest corner of Lot 1, Miniwood Addition, an addition to the Town of Addison according to the plat recorded in Volume 82194, Page 2965 D.R.D.C.T.;

THENCE North 80°45'00" East, with the common line between said Inwood Addition and Miniwood Addition, a distance of 570.00 feet to 1/2 inch iron rod with yellow plastic cap stamped "KADLECK 3952" found for corner at the Northwest corner of a tract of land described by deed as Tract II to Friday Morning Inc as recorded in Volume 91213, Page 2336 D.R.D.C.T.;

THENCE along said Friday Morning Tract II the following calls:

South 09°15'00" East, a distance of 97.87 feet to a 1/2 inch iron rod found for corner;

South 16°49'00" East, a distance of 216.67 feet to a 1/2 inch iron rod found for corner in the North line of a 50 foot Access, Utility and Drainage Easement;

North 89°49'46" East, with the North line of said Easement, a distance of 224.48 feet to an "x" cut in concrete set for corner in the West line of Inwood Road (a 60-foot public right-of-way);

THENCE South 16°49'00" East, with said West line of Inwood Road, a distance of 52.19 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in said West line of Inwood Road, said rod being the Northeast corner of Tract I of said Friday Morning tract;

THENCE along said Friday Morning Tract II the following calls:

South 89°49'46" West, with the South line of said Easement a distance of 203.61 feet to a 1/2 inch iron rod found for corner;

South 00°10'14" East. departing said South line a distance of 98.81 feet to an "x" cut in concrete set for corner;

North 89°49'46" East, a distance of 10.00 feet to an "x" cut in concrete set for corner;

South 16°49'00" East, a distance of 216.00 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in the South line of said Inwood Addition and the North line of a Texas Utilities Electric Co tract;

THENCE South 89°49'46" West with the South line of said Inwood Addition and the North line of said Texas Utilities tract, a distance of 748.22 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner, said corner being the Southwest corner of said Inwood Addition and the Southeast corner of aforementioned Tuesday Morning Addition;

THENCE along said Tuesday Morning Addition the following calls:

North 87°15'17" West, a distance of 800.81 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in the East line of Gillis Road (a 60 foot public right-of-way);

North 00°09'17" West, with said East line, a distance of 335.45 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner;

North 46°17'43" East, a distance of 20.67 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in the South line of Beltwood Parkway South (a 60 foot public right-of-way);

South 87°15'17" East, a distance of 380.22 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner and the beginning of a curve to the left with a radius of 100.00 feet and a chord which bears North 46°17'23" East for 144.97 feet;

Along said curve to the left through a central angle of 92°54'39" and an arc length of 162.16 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner in the East line of Beltway Parkway East (a 60 foot public right-of-way);

North 00°09'17" West, with said East line, a distance of 394.80 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner, said rod being the Southwest corner of Lot 2, Block A of Dallas Semiconductor Business Park II an addition to the City of Farmers Branch recorded in Volume 2004084, Page 51 D.R.D.C.T.;

South 89°57'34" East, a distance of 300.00 feet to a 1/2 iron rod with orange cap stamped "P&C 100871" set for corner, said rod being the Southeast corner of said Semiconductor Addition;

South 00°09'17" East, for a distance of 294.59 to the POINT OF BEGINNING and containing 19.512 acres, or 849,826 square feet of land, more or less.

Tuesday Morning Beltwood Addition, Lot 1, Block A, a portion of Block E, Beltwood Business Park, Second Installment, an addition to the City of Farmers Branch, Dallas County, Texas, according to the plat thereof recorded under Clerk's File No. 2006-276647, Plat Records, Dallas County, Texas.

TRACT IV: EASEMENT ESTATE

EASEMENT ESTATE created in Easement and Right of Way filed April 1, 1983, recorded in Volume 83066, Page 3869, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146 and said tract also being part of Lots 1 and 2 of Inwood Park North, an addition to the City of Addison, according to the plat thereof filed in Volume 79234 at Page 1, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at the Southeast corner of Inwood Park North Addition, said corner also being in the West line of Inwood Road;

THENCE South 89°49'46" West, along the South line of said addition, a distance of 223.15 feet to a point for corner;

THENCE North 16°49'00" West, a distance of 20.87 feet to a point for corner;

THENCE North 89°49'46" East, a distance of 223.15 feet to a point for corner in the West line of Inwood Road;

THENCE South 16°49'00" East, along the West line of Inwood Road, a distance of 20.87 feet to the POINT OF BEGINNING.

TRACT V: EASEMENT ESTATE

EASEMENT ESTATE created in Maintenance Easement filed April 1, 1983, recorded in Volume 83066, Page 3875, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, said tract also being part of Lot 3 of Inwood Park North, an addition to the City of Addison, according to the plat thereof filed in Volume 79234 at Page 1, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a point in the North line of Lot 3, said point being South 80°45'00" West, a distance of 193.96 feet from the Northeast corner of Inwood Park North Addition;

THENCE South 09°15'00" East, a distance of 173.16 feet to a point for corner;

THENCE North 16°49'00" West, a distance of 75.94 feet to a point for corner;

THENCE North 09°15'00" West, a distance of 97.88 feet to a point for corner in the North line of Lot 3;

THENCE North 80°45'00" East, with said North line a distance of 10.00 feet to the POINT OF BEGINNING.

TRACT VI: EASEMENT ESTATE

EASEMENT ESTATE created in Maintenance Easement filed April 1, 1983, recorded in Volume 83066, Page 3881, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, said tract also being part of Lot 2 of Inwood Park North, an addition to the City of Addison, according to the plat thereof filed in Volume 79234, Page 1, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a point in the South line of said Lot 2 said point being South 89°49'46" West, a distance of 212.71 feet from the Southeast corner of Inwood Park North Addition;

THENCE South 89°49'46" West, with the South line of Lot 3, a distance of 10.44 feet to a point for corner;

THENCE North 16°49'00" West, a distance of 216.00 feet to a point for corner;

THENCE North 89°49'46" East, a distance of 10.44 feet to a point for corner;

THENCE South 16°49'00" East, a distance of 216.00 to the POINT OF BEGINNING.

TRACT VII: EASEMENT ESTATE

EASEMENT ESTATE created in Underground Gas Easement filed April 1, 1983, recorded in Volume 83066, Page 3887, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146 and being part of Lot 2 of Inwood Park North, an addition to the City of Addison, according to the plat thereof recorded in Volume 79234, Page 1, Deed Records, Dallas County, Texas and being 5 feet right and 5 feet left of the following described centerline:

COMMENCING at the Southeast corner of said Inwood Park North, thence South 89°49'46" West, a distance of 223.15 feet to a point;

THENCE North 16°49'00" West, a distance of 208.00 feet to the POINT OF BEGINNING of the herein described center;

THENCE North 73°11'00" East, a distance of 21.80 feet to a point on the East line of said Lot 2 and the terminus of said centerline.

TRACT VIII: EASEMENT ESTATE

EASEMENT ESTATE created in Sign Easement filed April 1, 1983, recorded in Volume 83066, Page 3893, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, said tract also being part of Lot 1 Inwood Park North, an addition to the City of Addison, according to the plat thereof filed in Volume 79234, Page 1, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a point in the South line of a 50 foot Access, Utility and Drainage Easement said point being South 89°49'46" W, a distance of 17.00 feet from the West line of Inwood Road;

THENCE South 00°10'14" East, a distance of 4.00 feet to a point for corner;

THENCE South 81°05'00" West, a distance of 13.15 feet to a point for corner;

THENCE North 00°10'14" West, a distance of 6.00 feet to a point for corner in the South line of the aforementioned 50 foot easement;

THENCE North 89°49'46" East, along said South line, a distance of 13.00 feet to the POINT OF BEGINNING.

TRACT VIIII: EASEMENT ESTATE

EASEMENT ESTATE created in Sign Easement filed April 1, 1983, recorded in Volume 83066, Page 3900, Real Property Records, Dallas County, Texas.

BEING a tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, said tract also being part of Lot 1 Inwood Park North, an addition to the City of Addison, according to the plat thereof filed in Volume 79234, Page 1, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a point in the North line of a 50 foot Access, Utility and Drainage Easement said point being S 89°49'46" W, a distance of 13.00 feet from the West line of Inwood Road;

THENCE South 89°49'46" West, along the North line of said easement, a distance of 13.00 feet to a point for corner;

THENCE North 00°10'14" West, a distance of 4.00 feet to a point for corner;

THENCE North 81°05'00" East, a distance of 13.15 feet to a point for corner;

THENCE South 00°10'14" East, a distance of 6.00 feet to the POINT OF BEGINNING.

14303 INWOOD ROAD, FARMERS BRANCH, TEXAS:

Lot 1 in Block A of Tuesday Morning Addition, an addition to the City of Farmers Branch, Dallas County, Texas, according to the Replat thereof recorded in Volume 2003011, Page 312, Plat Records, Dallas County, Texas.

6250 LYNDON B. JOHNSON FREEWAY, DALLAS, TEXAS:

BEING 4.895 acres of land, located in BLOCK 7443 in the City of Dallas, and being a portion of the McKinney & Williams Survey, Abstract No. 1032, and the Thomas Dykes Survey, Abstract No. 405, Dallas County, Texas, and being a portion of the tract of land conveyed to E-Systems, Inc., by the deed recorded in Volume 76062, Page 1507, Deed Records, Dallas County, Texas, said 4.895 acres being more particularly described as follows:

BEGINNING at a cross cut in a Texas Highway Department concrete right-of-way monument, at the intersection of the South right-of-way line of Lyndon B. Johnson Freeway, Interstate Highway No. 635 (a variable width right-of-way) with the West right-of-way line of Hughes Lane (a 60 foot right-of-way);

THENCE along the East boundary line of said E-Systems tract and the West right-of-way line of said Hughes Lane as follows:

South 308.77 feet, to an "X" cut in concrete found;

S 00° 23' 32" W, 174.17 feet to a 1" iron pipe found at the Southeast corner of said E-Systems tract, being the intersection of the North boundary line of a 15 foot wide alley, as dedicated by the plat of Huffines Hill Addition to the City of Dallas, Dallas County, Texas, according to the plat recorded in Volume 20, Page 213, Map Records, Dallas County, Texas;

THENCE S 89° 46' 20"W, 578.75 feet along the South boundary of said E-Systems tract and the North boundary line of said 15 foot wide alley to a 1/2" iron rod found at the most Southerly Southeast corner of Lot 1, Block A/7443, 6200 L. B. J. Office Park, an addition to the City of Dallas, Dallas County, Texas according to the plat recorded in Volume 84234, Page 1926, Plat Records, Dallas County, Texas;

THENCE severing the original said E-Systems tract and running along the East boundary line of said Lot 1, Block A/7443, 6200 L. B. J. Office Park Addition, as follows:

N 00° 19' 49" E, 136.96 feet to a 1/2" iron rod found;

S 89° 53' 46" E, 172.29 feet to a 1 1/2" iron pipe found at the most Easterly Southeast corner of said Lot 1, Block A/7443;

N 00° 02' 11" W, 314.84 feet to a 1/2" iron rod found at the Northeast corner of said Lot 1, Block A/7443, lying in the South right-of-way line of aforesaid Lyndon B. Johnson Freeway;

THENCE along the original North boundary line of said E-Systems tract, being the South right-of-way line of said Lyndon B. Johnson Freeway as follows:

N 88° 06' 13" E, 23.21 feet to a Texas Highway Department concrete right-of-way monument found;

N 85° 05' 23" E, 385.28 feet to the Place of Beginning, containing 4.895 acres (213,210 square feet) of land, more or less.

SAVE AND EXCEPT all that certain land conveyed to the State of Texas by Deed recorded May 2, 2006 as Clerk's File No. 200600159784, Real Property Records, Dallas County, Texas.

EXHIBIT B

SPECIAL WARRANTY DEED

[EXHIBIT FOLLOWS ON NEXT PAGE]

SPECIAL WARRANTY DEED

Prepared by:
Haynes and Boone LLP
2323 Victory Avenue, Ste. 700
Dallas, Texas 75219
Attn: Brack Bryant

After Recording Return to:
[_____]
[_____]
[_____]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DALLAS §

_____, a_____("**Grantor**"), whose address is _____, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has GRANTED, BARGAINED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto _____, a _____ ("**Grantee**") whose address is _____, the tract or parcel of land in Tarrant County, Texas, described in **Exhibit A**, together with all improvements thereon and all rights, titles, and interests appurtenant thereto including, without limitation, Grantor's interest, if any, in any and all adjacent streets, alleys, rights of way and any adjacent strips and gores, together with all of Grantor's right, title and interest, if any, in and to any and all minerals and mineral rights, oil, gas, and oil and gas rights, other hydrocarbon substances and rights, development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps (or their equivalents), and sanitary or storm sewer capacity appertaining to or otherwise benefiting or used in connection with said real property (such land and interests are hereinafter collectively referred to as the "**Property**").

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee subject to the Permitted Exceptions listed on **Exhibit B** attached hereto (collectively, the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto the said Grantee, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor but not otherwise, subject to the Permitted Exceptions.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of _____, 2020, to be effective as of _____.

_____,
a_____

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, by _____, _____ of_____, a_____, on behalf of said corporation ..

_____
Notary Public, State of _____

EXHIBIT A

[Description of the Property]

EXHIBIT B

[Permitted Exceptions]

EXHIBIT C

BILL OF SALE AND ASSIGNMENT

[EXHIBIT FOLLOWS ON NEXT PAGE]

BILL OF SALE AND ASSIGNMENT

this bill of sale and assignment (this "**bill of sale**") is made as of the _____ day of _____, 2020, by and between _____, a ___ ___**("Assignor"), And** _____**,a** _____ **("Assignee").**

W I T N E S S E T H:

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby sells, transfers and conveys to Assignee all of Assignor's right, title and interest, if any, in and to the following, in each case to the extent located on that certain land and improvements commonly known as **(i)** 4400-4404 South Beltwood Parkway, Farmers Branch, Texas, **(ii)** 14621 Inwood Road, Addison, Texas, **(iii)** 14639 Inwood Road, Addison, Texas, **(iv)** 14601 Inwood Road, Addison, Texas, **(v)** 14303 Inwood Road, Farmers Branch, Texas, and **(vi)** 6250 Lyndon B. Johnson Freeway, Dallas, Texas (collectively, "**Real Property**"), as more particularly described in the Purchase Agreement (as hereinafter defined):

(a) all tangible personal property furniture, fixtures and equipment attached to or used in connection with the ownership, maintenance, or operation of the Real Property (the "**Personalty**"); provided however, that the Personalty does not include the Excluded Tangible Personal Property (as defined in the Purchase Agreement);

(b) the plans and specifications and other architectural and engineering drawings for the improvements located on the Real Property, if any (to the extent in Assignor's possession and assignable without any cost to Assignor); warranties (to the extent in Assignor's possession and assignable without any cost to Assignor); governmental permits, approvals and licenses, if any (to the extent in Assignor's possession and assignable without any cost to Assignor); and

(c) notwithstanding anything contained herein to the contrary, in no event shall any of Assignor's trade names, marks, signage, branding, and other identifying marks related to "Tuesday Morning" or its subsidiaries or affiliates, be included within the Personalty or otherwise be deemed or construed to have been transferred by this Bill of Sale, all of which are expressly reserved to, and retained by, Assignor.

2. This Bill of Sale is given pursuant to that certain Purchase and Sale Agreement (as amended, the "**Purchase Agreement**") dated as of _____, between Assignor and Assignee, providing for, among other things, the conveyance of the Personalty.

3. As set forth in Article 11 of the Purchase Agreement, which is hereby incorporated by reference as if herein set out in full and except as set forth herein, except as expressly set forth in the Purchase Agreement, the property conveyed hereunder is conveyed by Assignor and accepted by Assignee **AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE.**

4. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the date first above written.

ASSIGNOR:

_____,
a _____

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____

Title: _____

EXHIBIT D

FIRPTA CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform _____ ("**Transferee**") that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a _____("**Transferor**"), the undersigned, in his capacity as _____ of _____, but not individually, hereby certifies to Transferee the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);

3. Transferor's U.S. employer identification number is _____; and

4. Transferor's office address is _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated as of _____, 2020.

a _____

By: _____
Name: _____
Title: _____

Purchase and Sale Agreement
6250 Lyndon B. Johnson Freeway, Dallas, Texas
4404 South Beltwood Parkway, Farmers Branch, Texas
14621, 14639 and 14601 Inwood Road, Addison, Texas
14303 Inwood Road, Farmers Branch, Texas

EXHIBIT E-1

DISTRIBUTION CENTER LEASE

[EXHIBIT FOLLOWS ON NEXT PAGE]

Purchase and Sale Agreement
6250 Lyndon B. Johnson Freeway, Dallas, Texas
4404 South Beltwood Parkway, Farmers Branch, Texas

EXHIBIT E-2

OFFICE LEASE

[EXHIBIT FOLLOWS ON NEXT PAGE]

EXHIBIT F

SERVICE CONTRACTS

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TUESDAY MORNING CORPORATION

Tuesday Morning Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Tuesday Morning Corporation. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State on August 26, 1991 (the "Original Certificate of Incorporation"). The Certificate of Incorporation of the Corporation was amended on March 26, 1999 and May 12, 1999 (such amendments together with the Original Certificate of Incorporation, the "Prior Certificate of Incorporation").

2. The amendments to the Prior Certificate of Incorporation herein certified have been duly adopted in accordance with Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (the "DGCL") and pursuant to the authority granted to the Corporation under Section 303 of the DGCL to put into effect and carry out the *Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et. al.* (the "Plan"), filed by the Corporation and certain of its subsidiaries pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Plan was confirmed by an order, entered December 23, 2020, of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, a court having jurisdiction over the Corporation's chapter 11 cases under the Bankruptcy Code, which order provides for the making and filing of this Amended and Restated Certificate of Incorporation.

3. This Amended and Restated Certificate of Incorporation amends and restates the Prior Certificate of Incorporation of this Corporation, in accordance with the requirements of the DGCL, to read as herein set forth in full:

ARTICLE ONE

The name of the Corporation is Tuesday Morning Corporation.

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Corporation Trust Center, in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOUR

The total number of shares of capital stock that the Corporation shall have the authority to issue is 210,000,000 shares, consisting of 200,000,000 shares of common stock, $.01 par value (the "Common Stock"), and 10,000,000 shares of preferred stock, $.01 par value (the "Preferred Stock"). Shares of Preferred Stock may be issued from time to time in one or more series, each such series to have such distinctive designation or title as may be fixed by the Board of Directors prior to the issuance of any shares thereof. Each such series shall have such designations, preferences, limitations and relative rights, including voting rights, as shall be stated in the resolution or resolutions providing for the issuance of such series of Preferred Stock, as may be adopted from time to time by the Board of Directors prior to the issuance of any shares thereof (the "Preferred Designation"), in accordance with the laws of the State of Delaware. The Board of Directors, in such resolution or resolutions, may increase or decrease the number of shares within each such series; provided, however,

the Board of Directors may not decrease the number of shares within a series to less than the number of shares within such series that are then issued.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the Bylaws of the Corporation without any action on the part of the stockholders. The stockholders shall also have the power to make, alter or repeal the Bylaws.

ARTICLE SEVEN

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Corporation or in the Bylaws of the Corporation. Election of directors need to be by written ballot unless the Bylaws of the Corporation so provide.

ARTICLE EIGHT

To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any amendment, repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The Corporation shall indemnify to the fullest extent permitted by law as it presently exists or may hereafter be amended, any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that he, his testator, or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation. Any amendment, repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of any person existing at the time of such repeal or modification.

ARTICLE NINE

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE TEN

In accordance with Section 203 of the General Corporation Law of the State of Delaware, the Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

ARTICLE ELEVEN

Section 11.1 Definitions. As used in this Article XI, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treasury Regulation §§ 1.382-2T, 1.382-3 and 1.382-4 shall include any successor provisions):

(a) "**4.5-percent Transaction**" means any Transfer described in clause (a) or (b) or (c) of Section 11.2.

(b) "**4.5-percent Stockholder**" means a Person who owns 4.5% or more of the Corporation's then-outstanding Common Shares, whether directly or indirectly, and including shares such Person would be deemed to constructively own or

which otherwise would be aggregated with shares owned by such Person pursuant to Section 382 of the Code, or any successor provision or replacement provision and the Treasury Regulations thereunder, and any other Person of group of Persons that is a "5-percent shareholder" of the Corporation within the meaning of Treasury Regulation §1.382-2T(g).

(c) "**Agent**" has the meaning set forth in Section 11.5.

(d) "**Common Shares**" means any interest in shares of common stock, par value $0.01 per share, of the Corporation that would be treated as "stock" of the Corporation pursuant to Treasury Regulation § 1.382-2T(f)(18).

(e) "**Code**" means the United States Internal Revenue Code of 1986, as amended from time to time, and the rulings issued thereunder.

(f) "**Corporation Security**" or "**Corporation Securities**" means (i) Common Shares, (ii) shares of preferred stock issued by the Corporation (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (including options within the meaning of Treasury Regulation §§ 1.382-2T(h)(4)(v)) and 1.382-4 to purchase Corporation Securities, and (iv) any Shares.

(g) "**Effective Date**" means the date that this Certificate of Incorporation was filed with the office of the Secretary of State of the State of Delaware.

(h) "**Excess Securities**" has the meaning given such term in Section 11.4.

(i) "**Expiration Date**" means the earlier of (i) the repeal of Section 382 of the Code or any successor statute if the Board determines that this Article XI is no longer necessary for the preservation of Tax Benefits, (ii) the beginning of a taxable year of the Corporation to which the Board of Directors determines that no Tax Benefits may be carried forward or (iii) such date as the Board shall fix in accordance with Section 11.12.

(j) "**Percentage Share Ownership**" means the percentage Share Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with the Treasury Regulation §§ 1.382-2T(g), (h), (j) and (k) and 1.382-4 or any successor provision.

(k) "**Person**" means any individual, firm, corporation or other legal entity, including a group of persons treated as an entity pursuant to Treasury Regulation § 1.382- 3(a)(1)(i); and includes any successor (by merger or otherwise) of such entity.

(l) "**Prohibited Distributions**" means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.

(m) "**Prohibited Transfer**" means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Article XI.

(n) "**Public Group**" has the meaning set forth in Treasury Regulation § 1.382-2T(f)(13).

(o) "**Purported Transferee**" has the meaning set forth in Section 11.4.

(p) "**Shares**" means any interest that would be treated as "stock" of the Corporation pursuant to Treasury Regulation §1.382-2T(f)(18).

(q) "**Share Ownership**" means any direct or indirect ownership of Shares, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect, and constructive ownership determined under the provisions of Section 382 of the Code and the regulations thereunder.

(r) "**Tax Benefits**" means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or

deduction attributable to a "net unrealized built-in loss" of the Corporation or any direct or indirect subsidiary thereof, within the meaning of Section 382 of the Code.

(s) "**Transfer**" means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition or other action taken by a Person, other than the Corporation, that alters the Percentage Share Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation §§ 1.382-2T(h)(4)(v) and 1.382-4). For the avoidance of doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Shares by the Corporation.

(t) "**Transferee**" means any Person to whom Corporation Securities are Transferred.

(u) "**Treasury Regulations**" means the regulations, including temporary regulations or any successor regulations promulgated under the Code, as amended from time to time.

Section 11.2 Transfer and Ownership Restrictions. In order to preserve the Tax Benefits, from and after the Effective Date any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date, shall be prohibited and void *ab initio* to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), (a) any Person or Persons would become a 4.5-percent Stockholder, (b) the Percentage Share Ownership in the Corporation of any 4.5-percent Stockholder would be increased, or (c) for any attempted Transfer of Corporation Securities during the five-year period beginning on the Effective Date, the Percentage Share Ownership in the Corporation of any 4.5-percent Stockholder would be decreased ; *provided, however*, that nothing herein contained shall preclude the settlement of any transaction in the Corporation Securities entered into through the facilities of a national securities exchange or trading on an over-the-counter market, *provided further, however*, that the Company Securities and parties involved in any such transaction shall remain subject to the provisions of this Article XI in respect of such transaction.

Section 11.3 Exceptions. Notwithstanding anything to the contrary herein:

(a) Transfers to a Public Group (including a new Public Group created under Treasury Regulation § 1.382-2T(j)(3)(i)) shall be permitted other than Transfers (or any series of Transfers of which such Transfer is a part) that would have the result described in Section 11.2(c).

(b) The restrictions set forth in Section 11.2 shall not apply to an attempted Transfer that is a 4.5-percent Transaction if the transferor or the Transferee obtains the written approval of the Board or a duly authorized committee thereof. As a condition to granting its approval pursuant to this Section 11.3, the Board, may, in its discretion, require (at the expense of the transferor and/or Transferee) an opinion of counsel selected by the Board that the Transfer shall not result in the application of any Section 382 of the Code limitation on the use of the Tax Benefits; *provided that* the Board may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. The Board may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Transferee to Transfer Shares acquired through a Transfer. Approvals of the Board hereunder may be given prospectively or retroactively. The Board, to the fullest extent permitted by law, may exercise the authority granted by this Article XI through duly authorized officers or agents of the Corporation. Nothing in this Section 11.3 shall be construed to limit or restrict the Board in the exercise of its fiduciary duties under applicable law.

Section 11.4 Excess Securities.

(a) No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the "**Purported Transferee**") shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities that are the subject of the Prohibited Transfer (the "**Excess**

Securities"). Until the Excess Securities are acquired by another person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section 11.5 or until an approval is obtained under Section 11.3. After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of Section 11.4 or Section 11.5 shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to its direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its share transfer agent as may be determined by the Board to be necessary or advisable to implement this Article XI, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of shares and other evidence that a Transfer will not be prohibited by this Article XI as a condition to registering any transfer.

Section 11.5 Transfer to Agent.

(a) If the Board determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer described in Section 11.2(a) or Section 11.2(b) then, upon written demand by the Corporation sent within thirty (30) days of the date on which the Board determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the "**Agent**"). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); *provided, however*, that any such sale must not constitute a Prohibited Transfer and *provided, further*, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 11.6 if the Agent rather than the Purported Transferee had resold the Excess Securities.

(b) If the Board determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer described in Section 11.2(c), then the Corporation shall follow the procedures in Section 11.5(a) as modified by this Section 11.5(b). If the Corporation cannot determine the identity of the Purported Transferee, then upon written demand by the Corporation sent within thirty (30) days of the date on which the Board determines that the attempted Transfer would result in Excess Securities, the 4.5-percent Stockholder who was the purported transferor in the Prohibited Transfer shall acquire through the Agent (and with such 4.5% Stockholder providing the funds) sufficient Securities to cause such 4.5-percent Stockholder, following such acquisition, not to be in violation of this Article XI; *provided, however*, that any such acquisition must not constitute a Prohibited Transfer. Such acquisition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision. If such 4.5% Stockholder fails to acquire such sufficient Securities within thirty (30) days from the date on which the Corporation makes a written demand pursuant to Section 11.5 (whether or not made within the time specified in Section 11.5), then the Corporation may direct the Agent to acquire such sufficient Securities (with funds provided by the Corporation) and shall record them as owned by such 4.5% Stockholder, which shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such 4.5% Stockholder shall be obligated to reimburse the Corporation for the cost of such sufficient Securities.

Section 11.6 Application of Proceeds and Prohibited Distributions. The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows: (a) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (b) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or the fair market value at the time of the Transfer, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance or similar Transfer) which amount shall be determined at the discretion of the Board; and (c) third, any remaining amounts shall be paid to one or more organizations qualifying under Section 501(c)(3) of the Code (or any comparable successor provision) selected by the Board. The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any transferor of Excess Securities. The Purported Transferee's sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Section 11.6. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 11.6 inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by the Agent in performing its duties hereunder.

Section 11.7 Modification of Remedies for Certain Indirect Transfers. In the event of any Transfer that does not involve a transfer of securities of the Corporation within the meaning of Delaware law ("**Securities**," and individually, a "**Security**") but which would cause a 4.5- percent Stockholder to violate a restriction on Transfers provided for in this Article XI, the application of Section 11.5 and Section 11.6 shall be modified as described in this Section 11.7. In such case, no such 4.5-percent Stockholder shall be required to dispose of any interest that is not a Security, but such 4.5-percent Stockholder and/or any Person whose ownership of Securities is attributed to such 4.5-percent Stockholder shall be deemed to have disposed of and shall be required to dispose of sufficient Securities (which Securities shall be disposed of in the inverse order in which they were acquired) to cause such 4.5-percent Stockholder, following such disposition, not to be in violation of this Article XI. Such disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of through the Agent as provided in Section 11.5 and Section 11.6, except that the maximum aggregate amount payable either to such 4.5-percent Stockholder, or to such other Person that was the direct holder of such Excess Securities, in connection with such sale shall be the fair market value of such Excess Securities at the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Securities shall be paid out of any amounts due such 4.5-percent Stockholder or such other Person. The purpose of this Section 11.7 is to extend the restrictions in Section 11.2 and Section 11.5 to situations in which there is a 4.5- percent Transaction without a direct Transfer of Securities, and this Section 11.7, along with the other provisions of this Article XI, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

Section 11.8 Legal Proceedings; Prompt Enforcement. If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within thirty (30) days from the date on which the Corporation makes a written demand pursuant to Section 11.5 (whether or not made within the time specified in Section 11.5), or if the purported transferor subject to Section 11.5(b) fails to acquire the Securities or make the payment required by Section 11.5(b), then the Corporation shall promptly take all cost effective actions that it believes are appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the applicable surrender, acquisition or payment. Nothing in this Section 11.8 shall (i) be deemed inconsistent with any Transfer of the Excess Securities provided in this Article XI being void *ab initio*, (ii) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (iii) cause any failure of the Corporation to act within the time periods set forth in Section 11.5 to constitute a waiver or loss of any right of the Corporation under this Article XI. The Board may authorize such additional actions as it deems advisable to give effect to the provisions of this Article XI.

Section 11.9 Liability. To the fullest extent permitted by law, any stockholder subject to the provisions of this Article XI who knowingly violates the provisions of this Article XI and any Persons controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

Section 11.10 Obligation to Provide Information. As a condition to the registration of the Transfer of any Shares, any Person who is a beneficial, legal or record holder of Shares, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this Article XI or the status of the Tax Benefits of the Corporation.

Section 11.11 Legends. The Board may require that any certificates issued by the Corporation evidencing ownership of Shares that are subject to the restrictions on transfer and ownership contained in this Article XI bear the following legend:

"THE CERTIFICATE OF INCORPORATION, AS AMENDED FROM TIME TO TIME (THE "**CERTIFICATE OF INCORPORATION**"), OF THE CORPORATION CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF COMMON SHARES OF THE CORPORATION (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE CORPORATION (THE "**BOARD OF DIRECTORS**") IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF STOCK OF THE CORPORATION (WITHIN THE MEANING OF SECTION 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "**CODE**") AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER) THAT IS TREATED AS OWNED BY A 4.5-PERCENT STOCKHOLDER UNDER THE CODE AND SUCH REGULATIONS. IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID *AB INITIO* AND THE PURPORTED TRANSFEREE OF THE SHARES WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE CORPORATION'S AGENT OR THE PURPORTED TRANSFEROR OF THE SHARES WILL BE REQUIRED TO REACQUIRE SHARES. IN THE EVENT OF A TRANSFER WHICH DOES NOT INVOLVE SECURITIES OF THE CORPORATION WITHIN THE MEANING OF THE DELAWARE SECURITIES ACT ("**SECURITIES**") BUT WHICH WOULD VIOLATE THE TRANSFER RESTRICTIONS, THE PURPORTED TRANSFEREE (OR THE RECORD OWNER) OF THE SECURITIES WILL BE REQUIRED TO TRANSFER SUFFICIENT SECURITIES PURSUANT TO THE TERMS PROVIDED FOR IN THE CERTIFICATE OF INCORPORATION TO CAUSE THE 4.5-PERCENT STOCKHOLDER TO NO LONGER BE IN VIOLATION OF THE TRANSFER RESTRICTIONS. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION, CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

The Board may also require that any certificates issued by the Corporation evidencing ownership of Shares that are subject to conditions imposed by the Board under Section 11.3 also bear a conspicuous legend referencing the applicable restrictions.

Section 11.12 Authority of Board of Directors.

(a) The Board shall have the power to determine all matters necessary for assessing compliance with this Article XI, including, without limitation, (i) the identification of 4.5-percent Stockholders, (ii) whether a Transfer is a 4.5-percent Transaction or a Prohibited Transfer, (iii) the Percentage Share Ownership in the Corporation of any 4.5-percent Stockholder, (iv) whether an instrument constitutes a Corporation Security, (v) the amount (or fair market value) due to a Purported Transferee pursuant to Section 11.6, and (vi) any other matters that the Board determines to be relevant; and the good faith determination of the Board on such matters shall be conclusive and binding for all the purposes of this Article XI. In addition, the Board may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations and procedures of the Corporation not inconsistent with the provisions of this Article XI for purposes of determining whether any Transfer of Corporation Securities would jeopardize the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this Article XI.

(b) Nothing contained in this Article XI shall limit the authority of the Board to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and its stockholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board may, by adopting a written resolution, (i) accelerate or extend the Expiration Date, (ii) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this Article XI, (iii) modify the definitions of any terms set forth in this Article XI or (iv) modify the terms of this Article XI as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise; *provided, however*, that the Board shall not cause there to be such acceleration, extension

or modification unless it determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Stockholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate.

(c) In the case of an ambiguity in the application of any of the provisions of this Article XI, including any definition used herein, the Board shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article XI requires an action by the Board but fails to provide specific guidance with respect to such action, the Board shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XI. All such actions, calculations, interpretations and determinations that are done or made by the Board in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this Article XI. The Board may delegate all or any portion of its duties and powers under this Article XI to a committee of the Board as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this Article XI through duly authorized officers or agents of the Corporation. Nothing in this Article XI shall be construed to limit or restrict the Board in the exercise of its fiduciary duties under applicable law.

Section 11.13 Reliance. To the fullest extent permitted by law, the Corporation and the members of the Board shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the President, Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer or Corporate Controller of the Corporation and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article XI. The members of the Board shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by any stockholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the 1934 Act (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

Section 11.14 Benefits of This Article XI. Nothing in this Article XI shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article XI. This Article XI shall be for the sole and exclusive benefit of the Corporation and the Agent.

Section 11.15 Severability. The purpose of this Article XI is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Article XI or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article XI.

Section 11.16 Waiver. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article XI, (a) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

ARTICLE TWELVE

Notwithstanding anything herein to the contrary, the Corporation shall not be authorized to issue non-voting capital stock of any class, series or other designation to the extent prohibited by Section 1123(a)(6) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"); provided, however, that the foregoing restriction shall (i) have no further force and effect beyond that required by Section 1123(a)(6) of the Bankruptcy Code, (ii) only have such force and effect for so long as Section 1123(a)(6) is in effect and applies to the Corporation, and (iii) be deemed void or eliminated if required under applicable law.

ARTICLE THIRTEEN

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery 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 for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Bylaws or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein

ARTICLE FOURTEEN

This Amended and Restated Certificate of Incorporation shall be effective as of 7:00 a.m., Dallas, Texas time, on December 31, 2020.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Incorporation to be duly executed in its corporate name by its duly authorized officer.

Dated: December 23, 2020

TUESDAY MORNING CORPORATION

By: /s/ Bridgett C. Zeterberg
Name: Bridgett C. Zeterberg
Title: Executive Vice President Human Resources, General Counsel and Corporate Secretary

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

TUESDAY MORNING CORPORATION

A Delaware corporation

(Effective as of December 31, 2020)

ARTICLE I.

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be located at 1209 Orange Street, Corporation Trust Center, Wilmington, Delaware, County of New Castle 19805. The name of the corporation's registered agent at such address shall be The Corporation Trust Company. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

Section 2. Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

Section 1. Time and Place of Annual Meeting. The annual meeting of stockholders shall be held on such date and at such location and time as shall be designated from time to time by the board of directors and stated in the notice of the meeting or in the waiver of notice thereof, for the purpose of electing directors and the transaction of such other business as may be properly brought before the meeting. If the date fixed for the annual meeting is a legal holiday, the meeting shall be held on the next succeeding business day. The board of directors may, in its sole discretion, determine that an annual meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by the Delaware General Corporation Law.

Section 2. Business Properly Brought Before an Annual Meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. This Section 2 of Article II is expressly intended to apply to any business properly brought before an annual meeting, regardless of whether such proposal is made by means of an independently financed proxy statement. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors, (b) otherwise properly brought before the meeting by or at the direction of the board of directors or (c) otherwise properly brought before the meeting by a stockholder of the corporation. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. 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 anniversary date of the immediately preceding annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before, or more than 30 days after, the anniversary date of the immediately preceding annual meeting, to be timely, notice by the stockholder must be received not later than the close of business on the tenth (10th) day following the earlier of the date on which a written statement setting forth the date of the annual meeting was mailed to stockholders or the date on which it is first disclosed to the public. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the full text of the stockholder's proposal and any proposed amendments to any document of the

corporation, (c) the name and address of the stockholder of record, as they appear on the corporation's books, of the beneficial owners, if any, and, if such stockholder or beneficial owner is an entity, of each director, executive, managing member or control person of such entity (any such individual or control person, a "control person") proposing such proposal, (d) the class and number of shares of the corporation which are held of record and beneficially by the stockholder and control persons, including a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, the stockholder and such beneficial owners and control persons the effect or intent of which is to mitigate loss, manage risk or benefit from share price change for, or maintain, increase or decrease the voting power of, such stockholder or such beneficial owners or control persons with respect to shares of stock of the corporation, (e) a representation that the stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (f) a representation that the stockholder is entitled to vote at the meeting and intends to appear at the meeting in person or by proxy to submit the business specified in such notice, (g) a representation whether the stockholder or the beneficial owner or control person, if any, will engage in a solicitation with respect to the proposal, and, if so, the percentage of shares of the corporation's capital stock entitled to vote on such matter that are believed or intended to be held by the stockholders to be solicited, the approximate number of stockholders to be solicited if less than all, and the name of each participant (as defined in Item 4 of Schedule 14A under the Securities Exchange Act of 1934, as amended, regardless of whether such solicitation is subject to such provision) in such solicitation, and (h) any material interest of the stockholder in such business; provided, however, that if the stockholder's proposal is submitted in accordance with, and is permitted by, Securities and Exchange Commission ("SEC") Rule 14a-8, then the stockholder may provide to the secretary of the corporation only the information required by such rule. In addition, if the stockholder's ownership of shares of the corporation, as set forth in the notice, is solely beneficial, documentary evidence of such ownership must accompany the notice. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Section 2 of Article II. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare to the meeting that any business which was not properly brought before the meeting is out of order and shall not be transacted at the meeting.

Section 3. Special Meetings. Except as otherwise provided by law, a special meeting of the stockholders may be called only by the president, chief executive officer or the Chairman of the Board and then only as provided for in resolutions duly adopted by the board of directors or at the written request of a majority of the directors. The resolutions or request shall state the purpose or purposes for which the meeting is to be called. The notice of every special meeting of stockholders shall state the purpose for which it is called. At any special meeting of stockholders, only such business shall be conducted as shall be provided for in the resolutions or request calling the special meeting. Any special meeting of stockholders may be adjourned by the presiding officer of the meeting for any reason (including, if the presiding officer determines that it would be in the best interests of the corporation to extend the period of time for the solicitation of proxies) from time to time and from place to place until the presiding officer shall determine that the business to be conducted at the meeting is completed, which determination shall be conclusive. The board of directors may, in its sole discretion, determine that a special meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by the Delaware General Corporation Law.

Section 4. Place of Meetings. The board of directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

Section 5. Notice. Except as otherwise required by law, whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. All such notices shall be delivered, either personally, by electronic transmission or by mail, by or at the direction of the board of directors, the president or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends 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.

Section 6. Inspectors. The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting 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. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation present or represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation present or represented at the meeting and such inspectors' count of all votes and ballots. Such certification shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 7. Stockholders List. The officer having charge of the stock ledger of the corporation shall make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also 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.

Section 8. Quorum. The holders of a majority of the outstanding shares of capital stock, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place.

Section 9. Adjourned Meetings. A meeting of stockholders may be adjourned by the presiding officer of the meeting for any reason (including, if the presiding officer determines that it would be in the best interest of the corporation to extend the period of time for the solicitation of proxies) from time to time and place to place until the presiding officer shall determine that the business to be conducted at the meeting is completed, which determination shall be conclusive. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law or of the certificate of incorporation, or except as otherwise provided hereunder, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 11. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of common stock held by such stockholder.

Section 12. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote by ballot, except that when such proxy is coupled with an interest and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy,

notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the secretary or a person designated by the secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 13. Action by Written Consent. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, 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 and bearing the dates of signature of the stockholders who signed the consent or consents, 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, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until such consent or consents are actually received at the registered office. All consents properly delivered in accordance with this section shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take suchcorporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

Section 14. Conduct of Meetings. The meetings of the stockholders shall be presided over by the chairman of the meeting, which shall be either the Chairman of the Board or the chief executive officer, or if neither the Chairman of the Board nor the chief executive officer is present, such other officer of the corporation as designated by the board of directors. The secretary of the corporation or an assistant secretary, shall act as secretary of such meetings, or if neither the secretary nor an assistant secretary is present, then a secretary shall be appointed by the chairman of the meeting. The board of directors of the corporation 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 of directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman 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 safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chairman 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 of directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination or a proposal for other business was not made in accordance with the procedures prescribed by the bylaws or the aforesaid rules, regulations or procedures prescribed for the meeting, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

ARTICLE III.

DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

Section 2. Number, Election and Term of Office. The number of directors which shall initially constitute the board upon the effective date of the *Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et. al., Pursuant to Chapter 11 of the Bankruptcy Code* shall be nine (9). Thereafter, the number of directors shall be established from time to time by resolution of the board. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 5 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Procedure for Nomination of Directors. Subject to the rights of holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation, nominations for the election of directors at a stockholders' meeting may be made by the board of directors or a committee appointed by the board of directors or by any stockholder entitled to vote in the election of directors generally. However, any stockholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a stockholders' meeting only if written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the secretary of the corporation not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before, or more than 30 days after, the anniversary date of the immediately preceding annual meeting, to be timely, the stockholder's written notice must be received not later than the close of business on the tenth (10th) day following the earlier of the date on which a written statement setting forth the date of the annual meeting was mailed to stockholders it is first disclosed to the public. Each notice of a nomination from a stockholder shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the corporation which are beneficially owned by such person, and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including without limitation such persons' written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (b) as to the stockholder giving the notice (i) the information required to be furnished in a notice of ~~such~~ stockholder~~,~~ proposal under clauses (c) through (g) of Section 2 of Article II, in each case in relation to such nomination and (ii) a description of all arrangements or understandings between the stockholder and each nominee and any other person or person (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder. At the request of the board of directors any person nominated by the board of directors for election as a director shall furnish to the secretary of the corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 3 of Article III. This Section 3 of Article III is expressly intended to apply to any nominations for directors submitted by stockholders, regardless of whether such nomination is made by means of an independently financed proxy statement.

Section 4. Removal and Resignation. Any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the corporation's certificate of incorporation, the provisions of this section shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice or by electronic transmission to the board of directors, the Chairman of the Board, if any, the chief executive officer, the president or the secretary of the corporation. Unless otherwise required in such notice, a resignation shall take effect upon delivery thereof to the board of directors or the designated officer. A resignation need not be accepted for it to be effective.

Section 5. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled only by affirmative vote of a majority of the directors then in office, though less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

Section 6. Annual Meetings. The annual meeting of each newly elected board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of stockholders.

Section 7. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors. Special meetings of the board of directors may be called by or at the request of the president or by any member of the board of directors on at least twenty-four (24) hours' notice to each director, either personally, by telephone, by mail, by overnight delivery service, by e-mail or by facsimile.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a different number is provided by law, the certificate of incorporation or these bylaws. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these bylaws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation except as otherwise limited by law or the certificate of incorporation. The board of directors 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. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

Section 10. Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the board of directors as provided in Section 9 of this Article III, of such committee is or are absent or disqualified, 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 of directors to act at the meeting in place of any such absent or disqualified member.

Section 11. Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

Section 12. Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends 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. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 13. Action by Written Consent. Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors 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 minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 14. Chairman of the Board. The Chairman of the Board shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The Chairman of the Board,

or when he or she is absent, the chief executive officer, shall preside at all meetings of the board of directors and shall have such other powers and duties as designated by these bylaws and as from time to time may be assigned to him or her by the board of directors.

Section 15. Compensation. Unless otherwise restricted by the certificate of incorporation, the board of directors shall have the authority to fix the compensation of directors and committee members.

ARTICLE IV.

OFFICERS

Section 1. Number. The officers of the corporation shall be elected by the board of directors and shall consist of a chief executive officer, a president, one or more vice-presidents, secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable, except that the offices of president and secretary shall be filled as expeditiously as possible.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be.The chief executive officer and the president shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The board of directors may appoint other officers to serve for such terms as it deems desirable. Vacancies may be filled or new offices created and filled at any meeting of the board of directors or by the chief executive officer. Each officer shall hold office until the first meeting of the board of directors after the annual meeting of stockholders next succeeding his or her election, and until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors or the chief executive officer for the unexpired portion of the term by the board of directors or the chief executive officer then in office.

Section 5. Compensation. Compensation of all officers shall be fixed by the board of directors or a committee thereof, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

Section 6. The Chief Executive Officer. The chief executive officer of the corporation shall have general charge of the business, affairs and property of the corporation, shall have control over its officers, agents and employees, shall see that all orders and resolutions of the board of directors are carried into effect, and shall have such other powers, authority and responsibilities as the board of directors may determine. The chief executive officer may execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. The chief executive officer may appoint additional officers as provided under Section 2 of this Article IV, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or as may be provided in these bylaws. Except as otherwise provided in these bylaws, either the chief executive officer or the Chairman of the Board shall preside at all meetings of the stockholders and (should he or she be a director) of the board of directors at which he or she is present.

Section 7. The President. Unless the board of directors otherwise provides and establishes a separate office of the president, the president shall be the chief executive officer of the corporation, and shall, subject to the control and discretion of the board of directors, have the general powers of the chief executive officer as provided under these bylaws. Upon establishment of a separate office of the president, the president shall, subject to the direction and control of the board of directors and the chief executive officer, participate in the supervision of the business and affairs of the corporation and he or she shall perform all duties incident to the

office of president and shall have and exercise such powers, authority and responsibilities as the board of directors or chief executive officer may determine.

Section 8. The Chief Financial Officer. The chief financial officer shall be the principal financial officer of the corporation, shall have charge of the corporation's books of account and shall be responsible for the maintenance of adequate records of all assets, liabilities and financial transactions of the corporation. The chief financial officer shall prepare and render such balance sheets, income statements and other financial reports as the board of directors, the Chairman of the Board, the chief executive officer, or the president may require. He or she shall perform such other duties as may be prescribed by these bylaws or as may be assigned to him or her by the Chairman of the Board, the chief executive officer, the president or the board of directors, and, except as otherwise prescribed by the board of directors, he or she shall have such powers and duties as generally pertain to the office of the chief financial officer.

Section 9. Vice-Presidents. The vice-president, of if there shall be more than one, the vice-presidents in the order determined by the board of directors or by the president, shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the board of directors, the president or these bylaws may, from time to time, prescribe.

Section 10. The Secretary and Assistant Secretaries. The secretary, or an assistant secretary, shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and either the secretary, or an assistant secretary, shall record in the official minutes all the proceedings of the meetings in a book or books to be kept for that purpose. Under the president's supervision, the secretary shall give, or cause to be given, all notices required to be given by these bylaws or by law; shall have such powers and perform such duties as the board of directors, the president or these bylaws may, from time to time, prescribe; and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, when requested to do so by the board of directors, president or secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the president, or secretary may, from time to time, prescribe.

Section 11. The Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; shall have such powers and perform such duties as the board of directors, the Chairman of the Board, the chief executive officer, the president or these bylaws may, from time to time, prescribe. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the chief executive officer, the president or treasurer may, from time to time, prescribe.

Section 12. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

Section 13. Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE V.

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in (whether as a primary party, a witness or otherwise) any pending, threatened or completed action, suit or proceeding, whether civil, criminal, administrative, investigative, legislative or otherwise, including any action by or in the right of the Corporation (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the corporation to the fullest extent not prohibited by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment) against all judgments, fines, penalties, amounts paid or to be paid in settlement, expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding)), and such indemnification shall inure to the benefit of his heirs, executors and administrators; provided, however, that, except as provided in Section 2 of this Article V, the corporation, shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the corporation. The right to indemnification conferred in this Article V shall, subject to Sections 2, 5 and 9 of this Article V, include advancement of expenses as provided in Section 5 of this Article V. The corporation may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

Section 2. Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the corporation under Section 1 of this Article V or advancement of expenses under Section 5 of this Article V shall be made promptly, and in any event within twenty (20) days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification and advancement of expenses pursuant to this Article V is required, and the corporation fails to respond within sixty (60) days to a written request for indemnity or advancement of expenses, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within twenty (20) days, the right to indemnification or advancement of expenses as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification or advancement of expenses, in whole or in part, in any such action shall also be indemnified by the corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its board of directors, a committee of the board of directors, independent legal counsel, or the stockholders), that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 3. Article Not Exclusive. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 4. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify such person against such liability under this Article V.

Section 5. Expenses. Expenses incurred by any person described in Section 1 of this Article V in defending a proceeding shall be paid by the corporation in advance of such proceeding's final disposition, unless it is determined by the board of directors, a committee of the board of directors, independent legal counsel or the stockholders in the specific case that such person has not met the applicable standards of conduct set forth in the Delaware General Corporation Law, upon receipt of an undertaking by or on behalf of the 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 or, where indemnification is granted, to the extent the expenses so advanced by the corporation, when aggregated with any indemnification amounts collected as described in Section 9 of this Article V, exceed the indemnification to which such person is entitled. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors, a committee of the board of directors, independent legal counsel or the stockholders deems appropriate.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article V and who are or were employees or agents of the corporation, or who are or were serving at the request of the corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.

Section 7. Contract Rights. The provisions of this Article V shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Article V and the relevant provisions of the Delaware General Corporation Law or other applicable law are in effect, and any repeal or modification of this Article V or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

Section 8. Merger or Consolidation. For purposes of this Article V, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Other Indemnification. Notwithstanding other provisions of this Article V, the corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust or other enterprise.

ARTICLE VI.

CERTIFICATES OF STOCK

Section 1. Form. The shares of stock of the corporation shall be represented by certificates; provided, however, that the board of directors may provide, by resolution, that some or all classes or series of its stock may be uncertificated shares. Every holder of stock of the corporation represented by certificates, and upon request, shall be entitled to have a certificate, signed by, or in the name of the corporation by the president or a vice-president and the secretary or an assistant secretary of the corporation, certifying the number of shares of a specific class or series owned by such holder in the corporation. If any such certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or its employee or (2) by a registrar, other than the corporation or its employee, the signature of any such president, vice-president, secretary, or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. All certificates for certificated shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation 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 for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of

such endorsement, transfer, authorization, and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Fixing a Record Date for Stockholder Meetings. 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 of directors 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 of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, 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 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 of directors may fix a new record date for the adjourned meeting.

Section 4. Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors 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 of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is 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 book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

Section 5. Fixing a Record Date for Other Purposes. 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 stock, or for the purposes of any other lawful action, the board of directors 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 sixty (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 of directors adopts the resolution relating thereto.

Section 6. Registered Stockholders. Prior to the surrender to the corporation of a certificate or certificates for a share or shares of certificated stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

Section 7. Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call

made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

ARTICLE VII.

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

Section 3. Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 6. Corporate Seal. The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words “Corporate Seal, Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the chief executive officer, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation’s stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person’s interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

Section 9. Section Headings. Section headings in these bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these bylaws is or becomes inconsistent with any provision of the certificate of incorporation, the Delaware General Corporation Law or any other applicable law, the provision of these bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VIII.

FORUM FOR ADJUDICATION OF DISPUTES

Unless the corporation consents in writing to the selection of an alternative forum, 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 director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

ARTICLE IX.

AMENDMENTS

These bylaws may be amended, altered, or repealed and new bylaws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the bylaws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

The undersigned, the secretary of the corporation, hereby certifies that the foregoing amended and restated bylaws were adopted by the directors of the corporation effective as of December 31, 2020.

By: /s/ Bridgett C. Zeterberg
Name: Bridgett C. Zeterberg
Title: Executive Vice President, Human Resources, General Counsel and Corporate Secretary

EXHIBIT 10.1

EXECUTION VERSION

CREDIT AGREEMENT

dated as of December 31, 2020,

among

TUESDAY MORNING CORPORATION,
as Holdings,

TUESDAY MORNING, INC.,
as Borrower,

THE LENDERS PARTY HERETO,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Sole Lead Arranger and Sole Bookrunner

and

BANK OF AMERICA, N.A.,
and
WELLS FARGO BANK, N.A.,
as Co-Syndication Agents

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EXHIBITS AND SCHEDULES

CREDIT AGREEMENT dated as of December 31, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), among TUESDAY MORNING, INC., a Texas corporation (the "Borrower"), each of the Subsidiary Guarantors (as hereinafter defined), TUESDAY MORNING CORPORATION, a Delaware corporation ("Parent"), TMI HOLDINGS, INC., a Delaware corporation ("Intermediate Holdings"), the LENDERS party hereto from time to time, JPMORGAN CHASE BANK, N.A., as administrative agent (in such capacity, the "Administrative Agent"), BANK OF AMERICA, N.A. and WELLS FARGO BANK, N.A., as co-syndication agents (in such capacity, the "Syndication Agents").

WHEREAS, on May 27, 2020 (the "Petition Date"), the Borrower and each of the Subsidiary Guarantors (as defined below) filed voluntary petitions with the Bankruptcy Court commencing their respective cases that are pending under Chapter 11 of the Bankruptcy Code (collectively, the "Cases"). In connection with the Cases, the Loan Parties, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto entered into that certain Senior Secured Super Priority Debtor-In-Possession Credit Agreement dated as of May 29, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "DIP ABL Credit Agreement");

WHEREAS, the Loan Parties filed the Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et al., Pursuant to Chapter 11 of the Bankruptcy Code dated November 18, 2020 (as amended, supplemented or otherwise modified from time to time, the "Plan of Reorganization") with the Bankruptcy Court, which Plan of Reorganization was confirmed by the Bankruptcy Court's order entered on December 23, 2020;

WHEREAS, the Borrower has requested that the Lenders and Issuing Banks extend exit financing in connection with the consummation of the Plan of Reorganization;

NOW THEREFORE, the Lenders and Issuing Banks are willing to extend such exit financing to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

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

"ABL Priority Collateral" shall have the meaning assigned such term in the Intercreditor Agreement.

"Account" shall have the meaning as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

"Account Debtor" shall mean a Person who is obligated under an Account, Chattel Paper or General Intangible.

"Acquisition" shall mean, with respect to any Person, (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person (whether by merger or consolidation of such Person with any other Person or otherwise) or (b) a purchase or other acquisition of all or substantially all of the assets or properties of another Person or of any business unit of another Person (whether by merger or consolidation of such Person with any other Person or otherwise).

"Adjusted LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate; provided, that if the Adjusted LIBO Rate as so determined would be less than 0.50%, such rate shall be deemed to 0.50% for the purposes of this Agreement.

"Adjusted One Month LIBOR Rate" means, for any day, an interest rate per annum equal to the sum of (i) 2.50% plus (ii) the Adjusted LIBO Rate for a one month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided, further, that if the LIBO Screen Rate, as determined without giving effect to the first proviso set forth in the definition of the "LIBO Screen Rate," at such time shall be less than 0.50%, such rate shall be deemed to be 0.50% for purposes of determining the "Adjusted One Month LIBOR Rate" and the "CBFR".

"Administrative Agent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

"Affected Lender" shall have the meaning assigned to such term in Section 2.20.

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, no Agent or Lender shall be deemed to be an Affiliate of the Borrower or its Subsidiaries with respect to transactions evidenced by any Loan Document.

"Agent Indemnitees" shall mean each Agent and its officers, directors, employees, Affiliates, agents and attorneys.

"Agent Professionals" shall mean attorneys, accountants, appraisers, auditors, environmental engineers or consultants, and other professionals and experts retained by the Administrative Agent.

"Agents" shall mean the Administrative Agent and the Syndication Agents.

"Aggregate Letter of Credit Subline" shall mean, at any time, the aggregate amount of the Letter of Credit Sublines of all Issuing Banks at such time. As of the Closing Date, the Aggregate Letter of Credit Subline is $15,000,000.

"Aggregate Revolving Exposure" means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

"Agreement" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Agreement Currency" has the meaning assigned to such term in Section 9.24.

"All Outstanding Equity Interests" shall mean, with respect to any Person, all of the outstanding Equity Interests (other than directors' qualifying shares and similar *de minimis* holdings required by Applicable Law) in such Person.

"Allowed General Unsecured Claims" shall have the meaning assigned to such term in the Plan of Reorganization.

"Ancillary Document" has the meaning assigned to it in Section 9.13(b).

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery , corruption, money laundering, any predicate crime to money laundering or any financial record keeping an reporting requirements related thereto.

"Applicable Law" shall mean all applicable laws, rules, regulations and binding governmental requirements having the force and effect of law applicable to the Person in question or any of its property or assets, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

"Applicable Margin" shall mean, for any day, with respect to any Loan, the applicable rate per annum set forth below under the caption "Revolver CBFR Applicable Margin" or "Revolver Eurodollar Applicable Margin", as the case may be, based upon the Average Quarterly Availability during the most recently ended fiscal quarter of the Borrower; provided that the "Applicable Margin" shall be the applicable rates per annum set forth below in Category III during the period from the Closing Date to, and including, the last day of the fiscal quarter of the Borrower ending on or about December 31, 2021:

CATEGORY	EXCESS AVAILABILITY	REVOLVER EURODOLLAR APPLICABLE MARGIN	REVOLVER CBFR APPLICABLE MARGIN
I	≥ $50,000,000	2.25%	1.25%
II	< $50,000,000 but ≥ $30,000,000	2.50%	1.50%
III	< $30,000,000	2.75%	1.75%

For purposes of the foregoing, each change in the Applicable Margin resulting from a change in Average Quarterly Availability shall be effective during the period commencing on and including the first day of each fiscal quarter of the Borrower and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Margin on the first day of any fiscal quarter of the Borrower, the Average Quarterly Availability during the most recently ended fiscal quarter of the Borrower shall be used. Notwithstanding the foregoing, the Average Quarterly Availability shall be deemed to be in Category III at the option of the Administrative Agent or at the request of the Required Lenders if the Borrower fails to deliver any Borrowing Base Certificate or related information required to be delivered by it pursuant to Section 5.12, during the period from the expiration of the time for delivery thereof until five days after each such Borrowing Base Certificate and related information is so delivered.

If at any time the Administrative Agent determines that any Borrowing Base Certificate or related information based on which Availability and/or such Average Quarterly Availability and the corresponding Applicable Margin was determined, as applicable, was incorrect (whether based on a restatement, fraud or otherwise) ("Inaccurate Information"), the Borrower shall be required to retroactively pay any additional amount (an "Additional Amount") that the Borrower would have been required to pay if such Borrowing Base Certificate or related information based upon which Availability and/or such Average Quarterly Availability was determined had been

accurate at the time it was delivered. Upon the making of such retroactive payment of such Additional Amount by the Borrower, no Event of Default under Section 7.01(c) shall be deemed to exist solely as a result of the Borrower's failure to have paid such Additional Amount when such Additional Amount would have been payable had there been no Inaccurate Information.

"Appraised Value Percentage" means the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of the Eligible Inventory as set forth in the Loan Parties' inventory stock ledgers, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Administrative Agent.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent and the Borrower (if the Borrower's consent is required by this Agreement), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent.

"Availability" shall mean as of any applicable date, (a) the amount by which the Line Cap at such time exceeds the Aggregate Revolving Exposure on such date, *minus* (b) the Availability Block; provided that, solely for purposes of (x) the definition of "Cash Dominion Trigger Period", (y) the definition of "Liquidity Event" and (z) Section 5.07(b), "Availability" shall be determined without regard to the Availability Block.

"Availability Block" shall mean (a) during the period from and after the Closing Date to, but excluding, the first anniversary of the Closing Date, an amount equal the greater of (i) $10,000,000 and (ii) ten percent (10%) of the Line Cap, and (b) from and after the first anniversary of the Closing Date, $0.

"Availability Reserve" shall mean the sum (without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria (including collection rates or collection percentages)) of (a) the Inventory Reserves; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the Swap Obligations Reserve, and (e) such additional reserves not otherwise addressed in clauses (a) through (d) above, in such amounts and with respect to such matters, as the Administrative Agent in its Permitted Discretion may elect to establish or modify from time to time.

Notwithstanding anything to the contrary in this Agreement, (i) so long as no Event of Default exists, such Availability Reserve shall not be established or changed except upon not less than three (3) days' (or such shorter period as may be agreed by the Borrower) prior written notice to the Borrower, which notice shall include a reasonably detailed description of such applicable Availability Reserve being established or changed (during which period (a) the Administrative Agent shall, if requested, discuss any such Availability Reserve or change with the Borrower, (b) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Availability Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower Availability Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent and (c) the Borrower shall not be permitted to request any Credit Extension if Availability (determined as if such new or changed reserve were in effect as of the time of such Credit Extension) after giving effect to such Credit Extension would be less than $0), and (ii) the amount of any Availability Reserve established by the Administrative Agent, and any change in the amount of any Availability Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Availability Reserve or such change. Notwithstanding clause (i) of the preceding sentence, changes to the Availability Reserve solely for purposes of correcting mathematical or clerical errors (and such other changes as are otherwise agreed by the Borrower) shall not be subject to such notice period, it being understood that no Default or Event of Default shall be deemed to result solely therefrom, if applicable, for a period of three (3) days.

"Available Tenor" shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (g) of Section 2.14.

"Average Quarterly Availability" means, for any fiscal quarter of the Borrower, an amount equal to the average daily Availability during such fiscal quarter, as determined by the Administrative Agent's system of records; provided, that in order to determine Availability on any day for purposes of this definition, the Borrower's Borrowing Base for such day shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.12 as of such day.

"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 Product" shall mean any of the following products, services or facilities extended to the Borrower or any Subsidiary by a Lender or any of its Affiliates: (a) Cash Management Services; (b) commercial credit card and merchant card services; (c) the WF Factoring Arrangement, (d) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases, (e) commercial equipment financing and leasing, (f) foreign exchange facilities, and (g) other banking products or services as may be requested by the Borrower or any Subsidiary, other than loans or letters of credit.

"Bank Product Obligations" shall mean Indebtedness and other obligations (including Cash Management Obligations) of a Loan Party 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, provided that (a) in no event shall amounts owing in respect of the WF Factoring Arrangement be included in the Bank Product Reserve or Availability Reserve, (b) no amounts owing in respect of the Specified Bank Products shall be included in the Bank Product Reserve or Availability Reserve except to the extent such amounts exceed $1 million in the aggregate, and in such case only to the extent of such excess and (c) no amounts owing in respect of Cash Management Obligations owed to Wells Fargo Bank, N.A. or one or more of its Affiliates shall be included in the Bank Product Reserve or Availability Reserve except to the extent such amounts exceed $2 million in the aggregate, and in such case only to the extent of such excess.

"Bankruptcy Code" shall mean Title 11 of the United States Code or any similar federal or state law for the relief of debtors, as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Northern District of Texas, Dallas Division or any other court having jurisdiction over the Cases from time to time and any Federal appellate court thereof.

"Benchmark" shall mean, initially, LIBO Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBO Rate or the then-current Benchmark, then "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (c) or clause (d) of Section 2.14.

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

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or

recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

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

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

"Benchmark Replacement Adjustment" shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

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

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

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

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

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

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

administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date" shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

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

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.14(d); or

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

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

"Benchmark Transition Event" shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

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

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

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

"Benchmark Unavailability Period" shall mean the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership or control 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 the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

"Borrower" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Borrowing" shall mean a group of Revolver Loans of a single Type and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"Borrowing Base" shall mean at any time of calculation, the sum of the following as set forth (other than with respect to clause (e)) in the most recently delivered Borrowing Base Certificate:

(a) the product of (i) the face amount of Eligible Credit Card Receivables multiplied by (ii) ninety percent (90%); plus

(b) the product of (i) the Cost of Eligible Inventory, multiplied by (ii) (A) during the period from January 1 through September 30 of each year, ninety percent (90%) and (B) during the period from October 1 through December 31 of each year, ninety-two and a half percent (92.5%), multiplied by (iii) the Appraised Value Percentage of such Inventory; plus

(c) with respect to any Eligible Letter of Credit, the product of (i) the Cost of the Inventory supported by such Eligible Letter of Credit, multiplied by (ii) (A) during the period from January 1 through September 30 of each year, ninety percent (90%) and (B) during the period from October 1 through December 31 of each year, ninety-two and a half percent (92.5%), multiplied by (iii) the Appraised Value Percentage of such Inventory; minus

(d) the Availability Reserve.

"Borrowing Base Certificate" shall mean a certificate in the form of Exhibit F, by which the Borrower certifies calculation of the Borrowing Base in accordance with Section 5.12.

"Borrowing Base Collateral" shall mean Collateral consisting of Credit Card Receivables, Eligible Letters of Credit and Inventory.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03.

"Budget" shall have the meaning assigned to such term in Section 5.04(f).

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law or other governmental action to remain closed; provided that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in Dollars in the London interbank market.

"Capital Expenditures" shall mean, in respect of any period, the aggregate of all expenditures incurred by the Borrower and the Subsidiaries during such period that, in accordance with GAAP, are required to be classified as capital expenditures, including Capital Lease Obligations incurred, provided, however, that Capital Expenditures for the Borrower and the Subsidiaries shall not include:

(a) expenditures of proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and the Subsidiaries within twelve (12) months of receipt of such proceeds,

(b) expenditures that are accounted for as capital expenditures of such Person and that actually have been paid for by a third party (other than the Borrower or any Subsidiary thereof) and for which neither the Borrower nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period, other than the payment of rent),

(c) the purchase price of equipment or property purchased during such period to the extent the consideration therefor consists of any combination of (x) used or surplus equipment or property traded in at the time of such purchase and (y) the proceeds of a reasonably concurrent sale of used or surplus equipment or property, in each case, in the ordinary course of business,

(d) expenditures that are accounted for as capital expenditures in connection with transactions constituting Permitted Business Acquisitions, or

(e) the interest component of any Capital Lease Obligation.

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

"Cases" shall have the meaning assigned such terms in the recitals to this Agreement.

"Cash Collateral" shall mean cash and any interest or other income earned thereon, or deposit account balances, and, with respect to LC Obligations only, any other credit support satisfactory to the applicable Issuing Bank, in each case that are delivered to the Administrative Agent to Cash Collateralize any Obligation.

"Cash Collateralize" shall mean the pledge and deposit with or the delivery of Cash Collateral to the Administrative Agent, as security for the payment of any Obligation, in an amount equal to the percentage of such outstanding Obligations as is required by the context herein. "Cash Collateralization" has a correlative meaning.

"Cash Dominion Trigger Period" shall mean the period (a) commencing on the date that (i) Availability shall be less than the greater of (A) $20.0 million and (B) 20% of the Line Cap, in either case for two (2) consecutive Business Days, (ii) Availability shall be less than $15.0 million, or (iii) an Event of Default shall have occurred, and (b) continuing until, during each of the preceding sixty (60)

consecutive days, (x) Availability shall have been greater than the greater of (A) $20.0 million and (B) 20% of the Line Cap and (y) no Event of Default shall have existed. For all purposes hereunder, a "Cash Dominion Trigger Period" shall be deemed to exist at all times during the Initial Cash Dominion Trigger Period.

"Cash Management Obligations" shall mean obligations owed by the Borrower or any Subsidiary in respect of any overdraft and related liabilities arising from treasury and treasury management services, Cash Management Services, credit cards, "p-cards" or any automated clearing house transfer of funds.

"Cash Management Services" any services provided from time to time by any Lender or any of its Affiliates (or any Person who at the time such arrangement was entered into was a Lender or an Affiliate thereof) to the Borrower or any Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts or similar cash management arrangements, including automated clearinghouse, e-Payables, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"Casualty Event" shall mean any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or any of its Subsidiaries.

"CBFR" shall mean the Prime Rate; provided that the CBFR shall never be less than the Adjusted One Month LIBOR Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CBFR due to a change in the Prime Rate or the Adjusted One Month LIBOR Rate shall be effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

"CBFR Borrowing" shall mean a Borrowing comprised of CBFR Loans.

"CBFR Loan" shall mean any Revolver Loan bearing interest at a rate determined by reference to the CBFR in accordance with the provisions of Article II.

"Change in Control" shall mean:

(a) except as otherwise permitted by Section 6.05(b), the acquisition of record ownership or direct beneficial ownership (i.e., excluding indirect beneficial ownership through intermediate entities by any Person which is the subject of clause (c) below) by any Person other than Parent (or another Parent Entity that has become a Loan Party) of any Equity Interests in Intermediate Holdings, such that after giving effect thereto Parent (or another Parent Entity that has become a Loan Party) shall cease to beneficially own and control 100% of the Equity Interests of Intermediate Holdings, or

(b) the acquisition of record ownership or direct beneficial ownership (i.e., excluding indirect beneficial ownership through intermediate entities by any Person which is the subject of clause (c) below) by any Person other than Intermediate Holdings (or another Parent Entity that is or has become a Loan Party) of any Equity Interests in the Borrower, such that after giving effect thereto Intermediate Holdings (or another Parent Entity that is or has become a Loan Party) shall cease to beneficially own and control 100% of the Equity Interests of the Borrower,

(c) the acquisition of beneficial ownership, directly or indirectly, by any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the date hereof), other than Osmium/Tensile and any employee benefit plan and/or Person acting as a trustee, agent or other fiduciary or administrator in respect thereof, of Equity Interests in Parent representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in Parent; or

(d) a "Change in Control" (or comparable event) as defined in the Term Loan Agreement.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or

issued after the Closing Date; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" shall have the meaning assigned to such term in Section 9.09.

"Chattel Paper" shall have the meaning set forth in Article 9 of the UCC.

"Claims" shall mean all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interests, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees) at any time (including after Payment in Full of the Obligations, resignation or replacement of the Administrative Agent or replacement of any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Loan Party or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted to be taken by an Indemnitee in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolver Loans, Overadvance Loans or Protective Advances.

"Closing Date" shall mean December 31, 2020.

"Closing Fee" shall have the meaning assigned to such term in Section 2.12(d).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean any and all assets subject or purported to be subject to a Lien pursuant to any Security Document, including all ABL Priority Collateral and Term Loan Priority Collateral.

"Collateral Agreement" shall mean the Guarantee and Collateral Agreement dated as of the Closing Date, among Holdings, the Borrower, each Subsidiary Guarantor and the Administrative Agent.

"Collateral Deposit Account" shall have the meaning assigned to it in Section 5.12(d)(iv).

"Commitment Letter" shall mean that certain Commitment Letter dated November 2, 2020 by and among the Borrower, J.P. Morgan, Wells Fargo Bank, N.A. and Bank of America, N.A.

"Commitment Revolver Termination Date" shall mean the earliest to occur of (a) the Revolver Termination Date; (b) the date on which the Borrower terminates the Revolver Commitments pursuant to Section 2.08; or (c) the date on which the Revolver Commitments are terminated pursuant to Section 7.01.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), and any successor statute.

"Confirmation Order" shall mean the Order confirming the Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et al., pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 1913] entered by the Bankruptcy Court on December 23, 2020.

"Consolidated Cash Balance" shall mean, at any time of determination, the aggregate amount of unrestricted cash and cash equivalents of the Loan Parties and their Subsidiaries, it being understood that Credit Card Receivables and any amounts on deposit in the General Unsecured Cash Fund Deposit Account for the benefit of the holders of Allowed General Unsecured Claims, in each case, shall be excluded from the calculation of Consolidated Cash Balance.

"Consolidated Cash Balance Report" shall mean a report in form and substance reasonably satisfactory to the Administrative Agent prepared by the Borrower setting forth with reasonable supporting detail the Consolidated Cash Balance as of the applicable date.

"Consolidated Fixed Charge Coverage Ratio" shall mean the ratio, determined on a consolidated basis for the Borrower and its Subsidiaries for the most recent four fiscal quarters period, of (a) EBITDAR for such period minus (i) Capital Expenditures (except those financed with Indebtedness for borrowed money other than the Revolver Loans) paid in cash for such period and (ii) the aggregate amount of federal, state, local and foreign income taxes paid or payable currently in cash for such period to (b) Consolidated Fixed Charges paid or payable currently in cash for such period.

"Consolidated Fixed Charges" shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis for any period, the sum (without duplication) of (a) Interest Expense (but excluding, in any event (w) Transactions Costs and annual administrative or other agency fees, (x) fees and expenses associated with Dispositions, Investments and any issuances of Equity Interests or Indebtedness (in each case (A) not prohibited under this Agreement and (B) whether or not consummated) and (y) amortization of deferred financing costs) paid or payable in cash for such period less any interest income for such period received or (without duplication) to be received currently in cash, (b) regularly scheduled principal payments on funded Indebtedness paid or payable currently in cash for such period (other than payments made among the Loan Parties (other than Holdings)), (c) all cash dividends or other distributions paid by the Borrower or any Subsidiary during such period to any Person other than the Borrower or a Subsidiary Guarantor (excluding items eliminated in consolidation) on any series of preferred stock or any Refunding Capital Stock of the Borrower or a Subsidiary during such period, (d) all cash dividends or other distributions paid by the Borrower or any Subsidiary paid to any Person other than the Borrower or any Subsidiary (excluding items eliminated in consolidation) on any series of Equity Interests of the Borrower or a Subsidiary that is not Qualified Capital Stock during such period, (e) Restricted Payments made under clauses (b), (d) and (h) of Section 6.06 made in cash during any fiscal period (other than Tax Distributions) and (f) Rent Expense for such period.

"Consolidated Net Income" shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Subsidiaries for such period, on a consolidated basis; provided, however, that, without duplication,

(a) any net after-tax (A) extraordinary, (B) nonrecurring or (C) unusual gains or losses or income or expenses (less all fees and expenses relating thereto) including, without limitation, any severance expenses, and fees, expenses or charges related to any offering of Equity Interests of any Parent Entity or the Borrower, any Investment or Indebtedness permitted to be incurred hereunder or refinancings thereof (in each case, whether or not successful), including any such fees, expenses or charges related to the Transactions (including any Transaction Costs), in each case, shall be excluded,

(b) any net after-tax income or loss from discontinued operations and any net after-tax gain or loss on disposal of discontinued operations shall be excluded,

(c) any net after-tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the board of directors (or equivalent governing body) of the Borrower) shall be excluded,

(d) any net after-tax income or loss (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness shall be excluded,

(e) the Net Income for such period of any Person that is not a subsidiary of such Person, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other

payments (including any ordinary course dividend, distribution or other payment) paid in cash (or to the extent converted into cash) to the referent Person or a subsidiary thereof in respect of such period,

(f) consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period, and

(g) any increase in amortization or depreciation or any non-cash charges resulting from any amortization, write-up, write-down or write-off of assets with respect to assets revalued upon the application of purchase accounting (including tangible and intangible assets, goodwill, deferred financing costs and inventory (including any adjustment reflected in the "cost of goods sold" or similar line item of the financial statements)) in connection with the Transactions, Permitted Business Acquisitions or any merger, consolidation or similar transaction not prohibited hereunder.

"Contractual Obligation" shall mean, as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, written undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling" and "Controlled" shall have meanings correlative thereto.

"Control Agreement" shall mean an agreement that grants the Administrative Agent "control" within the meaning of Section 9-104 or Section 9-106 (as applicable) of the UCC in effect in the applicable jurisdiction of the applicable Deposit Account, commodity account or securities account, in form and substance reasonably satisfactory to the Administrative Agent.

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

"Cost" shall mean the lower of cost or market value of Inventory, determined in accordance with the accounting policies used in the preparation of the Borrower's audited financial statements (pursuant to which the retail method of accounting is utilized for substantially all merchandise Inventories), which policies are in effect on the Closing Date. "Cost" does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Borrower's calculation of cost of goods sold.

"Covered Entity" shall mean any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" shall have the meaning assigned to it in Section 9.21.

"Credit Card Receivables" shall mean each "Account" (as defined in the UCC) and "payment intangible" (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a major credit or debit card issuer (including Visa, Mastercard, Discover and American Express and such other issuers approved by the Administrative Agent) to the Borrower or a Subsidiary Guarantor resulting from charges by a customer of the Borrower or a Subsidiary Guarantor on credit or debit cards issued by such issuer in connection with the sale of goods by the Borrower or a Subsidiary Guarantor, or services performed by the Borrower or a Subsidiary Guarantor, in each case in the ordinary course of its business.

"Credit Extension" shall mean any Borrowing and any issuance, amendment, extension or renewal of a Letter of Credit.

"Customs Broker Agreement" shall mean an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, a customs broker or other carrier, and the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent and agrees, upon notice from the Administrative Agent, to hold and dispose of the subject Inventory solely as directed by the Administrative Agent.

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

"Default" shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Default Rate" shall have the meaning assigned to such term in Section 2.13(d).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" shall mean any Lender that (a) has failed to perform any funding obligations (including its obligation to fund any portion of participations in Letters of Credit) hereunder, and such failure is not cured within two (2) Business Days of the date of the funding obligation; (b) has notified the Administrative Agent or the Borrower that such Lender does not intend to comply with its funding obligations hereunder or generally under other agreements to which it commits to extend credit or has made a public statement to that effect; (c) has failed, within three (3) Business Days following written request by the Administrative Agent or the Borrower, to confirm in a manner reasonably satisfactory to the Administrative Agent and the Borrower that such Lender will comply with its funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by the Administrative Agent of such confirmation); (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding or taken any action in furtherance thereof, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of any equity interest in such Lender or parent company so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of the 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 or (e) it or its Lender Parent has become the subject of a Bail-in Action.

"Deposit Account" shall have the meaning assigned thereto in Article 9 of the UCC.

"DIP ABL Credit Agreement" shall have the meaning assigned such terms in the recitals to this Agreement.

"DIP RE Credit Agreement" shall mean that certain Senior Secured Super Priority Debtor-In-Possession Delayed Draw Term Loan Agreement dated as of July 10, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date), among the Borrower, Holdings, the other guarantors party thereto, the lenders party thereto, and Franchise Group, Inc., as administrative agent.

"Disposition" shall mean any sale, transfer, lease or other disposition (whether effected pursuant to a Division or otherwise) of assets. "Dispose" shall have a meaning correlative thereto.

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

"Division" shall mean 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.

"Dollars" or "$" shall mean lawful money of the United States of America.

"Dominion Account" shall mean the Borrower's special concentration Deposit Account (account no.: xxxxxx7366 and any successor account) held at J.P. Morgan, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Loan Documents.

"Early Opt-in Election" shall mean, if the then-current Benchmark is the LIBO Rate, the occurrence of:

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

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

"EBITDA" shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis for any period, the Consolidated Net Income of the Borrower and the Subsidiaries for such period plus the sum of (a) (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (xv) of this clause (a) reduced such Consolidated Net Income for the respective period for which EBITDA is being determined):

(i) provision for Taxes based on income, profits or capital of the Borrower and the Subsidiaries for such period, including, without limitation, state, foreign, franchise and similar taxes, and Tax Distributions made by the Borrower during such period,

(ii) Interest Expense of the Borrower and the Subsidiaries for such period,

(iii) depreciation and amortization expenses of the Borrower and the Subsidiaries for such period,

(iv) without duplication of amounts added back pursuant to clause (xv) below, business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment costs, excess pension charges, contract termination costs (including future lease commitments) and costs to consolidate facilities and relocate employees); provided that with respect to each business optimization expense or restructuring charge or reserve, the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve, as the case may be,

(v) without duplication of amounts added back pursuant to clause (iv) above, with respect to each new store opened by the Borrower or any of its Subsidiaries, all net store operating losses relating thereto for a period of twelve (12) months following the opening of such new store,

(vi) Transaction Costs and fees, costs and expenses incurred directly in connection with any transaction, including any Investment, equity issuance, debt issuance, refinancing or Disposition (in each case, (A) not prohibited under this Agreement and (B) whether or not consummated) during such period; provided that the aggregate amount added to EBITDA for any period pursuant to this clause (vi) shall not exceed $5.0 million,

(vii) any other non-cash charges reducing Consolidated Net Income (excluding any such non-cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period not included in the calculation),

(viii) [reserved];

(ix) to the extent reimbursable by third parties pursuant to indemnification provisions, other transaction fees, costs and expenses, provided that the Borrower in good faith expects to receive reimbursement for such fees, costs and expenses within the next four (4) fiscal quarters,

(x) [reserved],

(xi) to the extent covered by insurance under which the insurer has been properly notified and has not denied or contested coverage, expenses with respect to liability events or casualty events,

(xii) any unrealized losses in the fair market value of any Swap Agreements,

(xiii) (A) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (B) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of equity interests held by management, in each case under this clause (B), to the extent such charges, costs, expenses, accruals or reserves are funded with the net cash proceeds of any equity issuance,

(xiv) any net unrealized losses resulting from currency translation losses related to currency remeasurements of Indebtedness (including any net loss resulting from Swap Agreements for currency exchange risk) and any unrealized foreign currency translation losses,

(xv) restructuring costs and any consulting or professional fees incurred in connection with the Cases on or prior to the first anniversary of the Closing Date in an aggregate amount not to exceed $10.0 million, and

(xvi) the proceeds of business interruption insurance, in an amount not to exceed the earnings for the applicable period that such proceeds are intended to replace; provided that the Borrower in good faith expects to receive such business interruption proceeds within the next four (4) fiscal quarters,

minus (b) (without duplication and to the extent the amounts described in this clause (b) increased such Consolidated Net Income for the respective period for which EBITDA is being determined) (i) income tax credits and Restricted Payments pursuant to Section 6.06(a)(i), (ii) all non-cash gains increasing Consolidated Net Income of the Borrower and the Subsidiaries for such period (but excluding any such gains (x) in respect of which cash or other assets were received in a prior period or will be received in a future period or (y) which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period), (iii) any unrealized gains in the fair market value of any Swap Agreements and (iv) any net unrealized gains resulting from currency translation gains related to currency remeasurements of Indebtedness (including any net gain resulting from Swap Agreements for currency exchange risk) and any unrealized foreign currency translation gains, minus (c) (without duplication) (i) the amount added back to EBITDA pursuant to clause (a)(ix) above to the extent such transaction fees, costs and expenses were not reimbursed within the time period required by such clause (which amount shall be deducted in the next succeeding fiscal quarter following expiration of the applicable time period) and (ii) the amount added back to EBITDA pursuant to clause (a)(xv) to the extent such business interruption proceeds were not received within the time period required by such clause (which amount shall be deducted in the next succeeding fiscal quarter following expiration of the applicable time period).

Notwithstanding anything to the contrary herein, the aggregate amount added back to EBITDA pursuant to clauses (a)(iv) and (a)(v) of the definition thereof and in respect of any pro forma adjustments made pursuant to the definition of "Pro Forma Basis" with respect to any applicable four (4) fiscal quarter period shall not exceed 20% of the EBITDA of the Borrower and the Subsidiaries for such four (4) fiscal quarter period (calculated prior to giving effect to any add back pursuant to clauses (a)(iv) and (a)(v) of the definition of "EBITDA" or any pro forma adjustments pursuant to the definition of "Pro Forma Basis"). This paragraph shall not apply with respect to clause (a)(v) above for purposes of calculating the Consolidated Fixed Charge Coverage Ratio.

"EBITDAR" shall mean, for any period, (a) EBITDA for such period *plus* (b) to the extent deducted in determining EBITDA for such period, Rent Expense.

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

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

"Electronic Signature" shall mean an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" shall mean any electronic system, including e-mail, e-fax, web portal access for the Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Eligible Assignee" shall mean (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof) and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans.

"Eligible Credit Card Receivables" shall mean, at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Loan Party from a credit card payment processor and/or credit card issuer, and in each case originated in the ordinary course of business of such Loan Party, (ii) unless owed by Visa, Mastercard, American Express Company or Discover, is acceptable to the Administrative Agent in its Permitted Discretion and (iii) in each case, is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (k) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, a Credit Card Receivable shall indicate no Person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount or otherwise excluded below, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Loan Party may be obligated to rebate to a customer, a credit card payment processor, or credit card issuer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Any Credit Card Receivables meeting the foregoing criteria shall be deemed Eligible Credit Card Receivables but only as long as such Credit Card Receivable is not included within any of the following categories, in which case such Credit Card Receivable shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivables which do not constitute an Account or "payment intangible" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

(c) Credit Card Receivables with respect to which a Loan Party does not have good, valid and marketable title, free and clear of any Lien (other than Liens permitted by Section 6.02(b)(iii); provided that any such Liens shall be subject to the Intercreditor Agreement and junior to the Liens granted to the Administrative Agent on such Credit Card Receivables);

(d) Credit Card Receivables that are not subject to a first priority security interest in favor of the Administrative Agent (it being the intent that chargebacks in the ordinary course by such processors shall not be deemed violative of this clause);

(e) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(f) Credit Card Receivables as to which the processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such credit card processor;

(g) Credit Card Receivables due from an issuer or payment processor of the applicable credit card which is the subject of any proceeding under the Bankruptcy Code;

(h) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable issuer with respect thereto;

(i) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables;

(j) Credit Card Receivables which are evidenced by "chattel paper" or an "instrument" of any kind unless such "chattel paper" or "instrument" is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent; or

(k) Credit Card Receivables which the Administrative Agent determines in its Permitted Discretion to be uncertain of collection.

"Eligible In-Transit Inventory" shall mean, as of any date of determination thereof, Inventory:

(a) for which full payment has been delivered to the seller of such Inventory and evidence of such payment has been received by the Administrative Agent;

(b) which has been shipped from (i) a foreign location for receipt by the Borrower or a Subsidiary Guarantor within thirty (30) days of the date of shipment or (ii) a domestic location for receipt by the Borrower or a Subsidiary Guarantor within fifteen (15) days of the date of shipment, but, in either case, which has not yet been delivered to the Borrower or a Subsidiary Guarantor;

(c) for which (i) the purchase order is in the name of the Borrower or a Subsidiary Guarantor and title has passed to the Borrower or a Subsidiary Guarantor or (ii) the document of title reflects the Borrower or a Subsidiary Guarantor as consignee or, if requested by the Administrative Agent after the occurrence and during the continuance of a Default or an Event of Default, names the Administrative Agent as consignee;

(d) in the case of any Inventory described in clause (b)(i) above, as to which the Administrative Agent has received a Customs Broker Agreement;

(e) which is insured in compliance with Section 5.02 hereof; and

(f) which does not qualify as Eligible Inventory solely because it (i) is not located in the United States of America (excluding territories or possessions of the United States) or (ii) is located at a location that is not owned or leased by the Borrower or a Subsidiary Guarantor, but which otherwise constitutes Eligible Inventory.

"Eligible Inventory" shall mean, as of the date of determination thereof, without duplication, (i) Eligible In-Transit Inventory, and (ii) all items of Inventory of the Borrower or a Subsidiary Guarantor that are finished goods, merchantable and readily saleable to the public in the ordinary course deemed by the Administrative Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Administrative Agent, complies with each of the representations and warranties respecting Inventory made by the Borrower or a Subsidiary Guarantor in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the criteria set forth below. The following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by the Borrower or a Subsidiary Guarantor or the Borrower or a Subsidiary Guarantor does not have good and valid title thereto;

(b) Inventory that is leased by, or is on consignment to, the Borrower or a Subsidiary Guarantor, or that is consigned by the Borrower or a Subsidiary Guarantor to a Person which is not a Loan Party;

(c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States of America (excluding territories or possessions of the United States);

(d) Inventory (other than Eligible In-Transit Inventory) that (i) is not located at a location that is owned or leased by the Borrower or a Subsidiary Guarantor or a "pool point" in the Loan Parties' distribution network or (ii) is located at a distribution center or warehouse leased by the Borrower or a Subsidiary Guarantor with Inventory having a value in excess of $1,000,000 at any such location, except in the case of this clause (ii) to the extent that the Borrower or a Subsidiary Guarantor has furnished the Administrative Agent with (A) any UCC financing statements or other documents that the Administrative Agent may determine to be necessary to perfect its security interest in such Inventory at such location and (B) (x) a Lien Waiver executed by the Person owning any such location on terms reasonably acceptable to the Administrative Agent or (C) if such location is in a landlord lien-priming state, a Rent and Charges Reserve has been imposed;

(e) Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute spare parts, promotional, marketing, packaging and shipping materials or supplies used or consumed in the Borrower's or a Subsidiary Guarantor's business, (iv) are seasonal in nature and which have been packed away for sale in a subsequent season, (v) are not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (vi) are bill and hold goods;

(f) Inventory that is not subject to a perfected first priority security interest in favor of the Administrative Agent (other than landlords' Liens permitted pursuant to clause (e) of Section 6.02 as to which either a Lien Waiver has been delivered or a Rent and Charges Reserve has been imposed);

(g) Inventory that consists of samples, labels, bags, packaging, and other similar non-merchandise categories;

(h) Inventory that is not insured in compliance with the provisions of Section 5.02 hereof;

(i) Inventory that has been sold but not yet delivered or as to which the Borrower or a Subsidiary Guarantor has accepted a deposit;

(j) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which the Borrower or any of its Subsidiaries has received notice of a dispute in respect of any such agreement unless the Administrative Agent is reasonably satisfied that it may sell or otherwise Dispose of such Inventory without (i) infringing the rights of such third party, (ii) violating any contract with such third party or (iii) incurring any liability with respect to the payment of royalties other than royalties incurred in connection with the sale of such Inventory pursuant to the current licensing agreement relating thereto; or

(k) Inventory acquired in a Permitted Business Acquisition, unless and until the Administrative Agent has completed or received an appraisal of such Inventory from appraisers satisfactory to the Administrative Agent, establishes an Inventory advance rate and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, all of the results of the foregoing to be reasonably satisfactory to the Agents.

"Eligible Letter of Credit" shall mean, as of any date of determination thereof, a Letter of Credit which supports the purchase of Inventory, (i) which Inventory does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued, (ii) which Inventory, when completed, otherwise would constitute Eligible Inventory, (iii) which Letter of Credit has an expiry within thirty (30) days of the date of initial issuance of such Letter of Credit, and (iv) which Letter of Credit provides that it may be drawn only after the Inventory is completed and after documents of title have been issued for such Inventory reflecting the Borrower, a Subsidiary Guarantor or the Administrative Agent as consignee of such Inventory.

"Enforcement Action" shall mean any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in a Loan Party's Insolvency Proceeding, or otherwise), in each case solely to the extent permitted by the Loan Documents.

"environment" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"Environmental Laws" shall mean all laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or actual or alleged exposure to, any Hazardous Materials or to occupational health and safety (to the extent relating to the environment or Hazardous Materials).

"Equity Interests" of any Person shall mean any and all shares, interests, 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 and any and all warrants, rights or options to purchase or other rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing (until so converted or exchanged).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor statute and the rules and regulations promulgated thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 (m) or (o) of the Code.

"ERISA Event" shall mean (a) any Reportable Event; (b) the existence with respect to any Loan Party, any ERISA Affiliate or any Plan of a non-exempt Prohibited Transaction; (c) the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA), applicable to such Plan, whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (e) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under

Section 4042 of ERISA; (f) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in Reorganization, or terminated (within the meaning of Section 4041A of ERISA); or (g) the failure by any Loan Party or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA.

"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.

"Eurodollar Borrowing" shall mean a Borrowing comprised of Eurodollar Loans.

"Eurodollar Loan" shall mean any Revolver Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

"Event of Default" shall have the meaning assigned to such term in Section 7.01.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

"Excluded Assets" shall have the meaning assigned to such term in Section 5.09(h).

"Excluded Deposit Accounts" shall mean (a) Deposit Accounts used specifically, solely and exclusively for Tax and Trust Funds, (b) any Term Loan Priority Collateral Account, (c) Deposit Accounts that do not have a daily balance at any time in excess of $250,000; provided that the aggregate amount of funds in all Deposit Accounts excluded under this clause (c) shall not exceed $1,000,000, and (d) the General Unsecured Cash Fund Deposit Account.

"Excluded Subsidiary" shall mean (a) any Subsidiary that is prohibited by law, regulation or Contractual Obligation in existence on the Closing Date and not entered into in contemplation of this Agreement from providing a Guarantee of the Obligations or that would require a governmental (including regulatory) consent, approval, license or authorization in order to provide such Guarantee, (b) any Subsidiary for which a Guarantee of the Obligations by such Subsidiary would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent, (c) Tuesday Morning Cares, a Texas not-for profit entity, and (d) any Subsidiary to the extent that the burden or cost of obtaining a Guarantee of the Obligations from such Subsidiary outweighs the benefit afforded thereby, as reasonably determined by the Administrative Agent and the Borrower; provided that, in no event shall any Subsidiary that guarantees the Term Loan Obligations or any other Material Indebtedness constitute an "Excluded Subsidiary".

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure to constitute an "eligible contract participant," as defined in the Commodity Exchange Act and the regulations thereunder, at the time the Guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by any jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes (other than engaging in a trade or business as a result of having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender making a Revolver Loan to the Borrower, any U.S. federal withholding tax that

(x) is in effect under Applicable Law and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Revolver Loan to the Borrower (or designates a new Lending Office) except to the extent that such Person (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to any U.S. federal withholding tax pursuant to Section 2.17(a) or Section 2.17(c) or (y) is attributable to such Lender's failure to comply with Section 2.17(e) with respect to such Revolver Loan unless such failure to comply with Section 2.17(e) is a result of a change in law after the date such Lender becomes a party to such Revolver Loan to the Borrower (or designates a new Lending Office), (d) any interest, additions to taxes or penalties with respect to the foregoing and (e) any withholding taxes imposed pursuant to FATCA.

"Existing Debt" shall mean the Indebtedness outstanding under the Prepetition Credit Agreement, the DIP ABL Credit Agreement and the DIP RE Credit Agreement.

"Existing Letters of Credit" shall mean the letters of credit issued (or deemed issued) under the DIP ABL Credit Agreement (including any banker's acceptances or other payment obligations arising therefrom) and outstanding as of the Closing Date and set forth on Schedule 1.01(b).

"Fairness Opinion" shall have the meaning assigned to such term in Section 6.07(b)(x).

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

"FCCR Test Amount" shall have the meaning assigned to such term in Section 6.10.

"Federal Funds Effective Rate" shall mean, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than 1.50%, such rate shall be deemed to be 1.50% for the purposes of this Agreement.

"Fee Letter" shall mean that certain Fee Letter dated November 2, 2020 by and among the Borrower and the Administrative Agent.

"Financial Officer" of any Person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

"FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"Flood Documentation" shall mean, with respect to each Mortgaged Property located in the United States or any territory thereof, (i) a completed "life-of-loan" Federal Emergency Management Agency standard flood hazard determination (together with a notice about Special Flood Hazard Area status and flood disaster assistance duly executed by the applicable Loan Party relating thereto), (ii) a copy of, or a certificate as to coverage under, and a declaration page relating to, the insurance policies required by Section 5.02(b) hereof and the applicable provisions of the Security Documents, each of which shall (A) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable), (B) name the Administrative Agent, on behalf of the Secured Parties, as additional insured and loss payee/mortgagee, (C) identify the address of each property located in a Special Flood Hazard Area, the applicable flood zone designation and the flood insurance coverage and deductible relating thereto and (D) be otherwise in form and substance reasonably satisfactory to the Administrative Agent and each Regulated Lender Entity and sufficient to comply with Flood Insurance Laws, and (iii) any other documents reasonably requested by any Regulated

Lender Entity to the extent such documents are required for compliance by such Regulated Lender Entity with applicable Flood Insurance Laws.

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statue thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and related legislation, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Floor" shall mean the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBO Rate.

"Foreign Benefit Arrangement" shall mean any employee benefit arrangement mandated by non-U.S. law that is maintained or contributed to by any Loan Party or any ERISA Affiliate.

"Foreign Lender" shall mean any Lender that is not a U.S. Person.

"Foreign Plan" shall mean each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by any Loan Party or any ERISA Affiliate.

"Foreign Plan Event" shall mean, with respect to any Foreign Benefit Arrangement or Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by Applicable Law or by the terms of such Foreign Benefit Arrangement or Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Benefit Arrangement or Foreign Plan required to be registered; or (c) the failure of any Foreign Benefit Arrangement or Foreign Plan to comply with any material provisions of Applicable Law and regulations or with the material terms of such Foreign Benefit Arrangement or Foreign Plan.

"Foreign Subsidiary" shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

"Fronting Exposure" shall mean a Defaulting Lender's Pro Rata share of LC Obligations, except to the extent allocated to other Lenders or Cash Collateralized under Section 2.21.

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States.

"General Intangible" shall mean any "general intangible" as such term is defined in the UCC.

"General Unsecured Cash Fund" shall have the meaning assigned to such term in the Plan of Reorganization.

"General Unsecured Cash Fund Deposit Account" shall mean the Deposit Account of the Borrower maintained with Signature Bank in which the General Unsecured Cash Fund is deposited and maintained.

"General Unsecured Cash Fund Escrow Agreement" shall mean that certain Escrow Deposit Agreement, dated on or about the Closing Date, between Parent, Bankruptcy Management Solutions, Inc., and Signature Bank, in its capacity as escrow agent.

"Governmental Authority" shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Guarantee" of or by any Person (the "guarantor") shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase

or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (v) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation, or (b) any Lien on any assets of the guarantor securing any Indebtedness of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include (x) endorsements for collection or deposit, in either case in the ordinary course of business or (y) customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement. The amount of any Guarantee for purposes of clause (b) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"guarantor" shall have the meaning assigned to such term in the definition of the term "Guarantee."

"Guarantors" shall mean, collectively, Parent, Intermediate Holdings, the Subsidiary Guarantors and any other Loan Party (including the Borrower with respect to any Secured Obligations of another Loan Party).

"Hazardous Materials" shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents of any nature which are subject to regulation by any Governmental Authority or which would reasonably be likely to give rise to liability under any Environmental Law, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas.

"Holdings" shall mean a collective reference to Parent and Intermediate Holdings, or, if Intermediate Holdings ceases to exist, shall mean Parent.

"IBA" shall have the meaning assigned to such term in Section 1.09.

"Impacted Interest Period" shall have the meaning assigned to such term in the definition of "LIBO Rate".

"Increase Date" shall have the meaning assigned to such term in Section 2.22(b).

"Increase Loan Lender" shall have the meaning assigned to such term in Section 2.22(b).

"Indebtedness" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business and maturing within three hundred sixty-five (365) days after the incurrence thereof), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) all payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Swap Agreements net of payments such Person would receive in the event of early termination on such date of determination, (h) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and (i) the principal component of all obligations of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof. The Indebtedness of the Borrower and the Subsidiaries shall exclude (i) accrued expenses and accounts and trade payables, (ii) liabilities under vendor agreements to the extent such indebtedness may be satisfied through non-cash means such

as purchase volume earnings credits and (iii) reserves for deferred income taxes. For the avoidance of doubt, "Indebtedness" shall not include any amounts due or payable for the benefit of the holders of Allowed General Unsecured Claims in accordance with the Plan of Reorganization.

"Indemnified Taxes" shall mean all Taxes other than Excluded Taxes and Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in Section 9.05(b).

"Initial Cash Dominion Trigger Period" shall mean the period commencing on the Closing Date and ending on the Spring-Out Date.

"Insolvency Proceeding" shall mean any case or proceeding commenced by or against a Person under any state, federal, provincial, territorial or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, bankruptcy, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, monitor, trustee, liquidator, administrator, conservator, custodian or other similar Person for such Person or any part of its Property, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; or (c) an assignment for the benefit of creditors.

"Insolvent" with respect to any Multiemployer Plan, shall mean the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

"Intercreditor Agreement" shall mean that certain Intercreditor and Subordination Agreement dated the Closing Date by and among the Borrower, the Administrative Agent and the Term Loan Agent.

"Interest Election Request" shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07.

"Interest Expense" shall mean, with respect to any Person for any period, the sum without duplication of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees (including fees with respect to Swap Agreements) payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (b) capitalized interest of such Person. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by the Borrower and the Subsidiaries with respect to Swap Agreements (provided that payments and costs upon the settlement or termination of a Swap Agreement will not be included in Interest Expense). For the avoidance of doubt, "Interest Expense" shall not include any amounts paid or repaid for the benefit of the holders of Allowed General Unsecured Claims or otherwise funded from the General Unsecured Cash Fund, in each case in accordance with the Plan of Reorganization.

"Interest Payment Date" shall mean, (a) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Revolver Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three (3) months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three (3) months' duration been applicable to such Borrowing and, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type, (b) with respect to any CBFR Loan, the first calendar day following the end of each fiscal quarter, and (c) the Revolver Termination Date.

"Interest Period" shall mean, as to any Eurodollar Borrowing, 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 1, 2, 3 or 6 months

thereafter, as the Borrower may elect, or the date any Eurodollar Borrowing is converted to a CBFR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.08 or Section 2.10; 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.

"Intermediate Holdings" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Interpolated Rate" shall mean, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided, that, if any Interpolated Rate shall be less than 0.50%, such rate shall be deemed to be 0.50% for purposes of this Agreement.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" shall mean, without duplication of any factors considered in the Appraised Value Percentage of Inventory and without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as may affect the market value of the Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Administrative Agent's Permitted Discretion, include (but are not limited to) reserves based on: (a) obsolescence; (b) seasonality; (c) Shrink; (d) imbalance; (e) change in Inventory character; (f) change in Inventory composition; (g) change in Inventory mix; (h) mark-downs (both permanent and point of sale); (i) retail mark-ons and markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and (j) out-of-date and/or expired Inventory.

"Investment" shall have the meaning assigned to such term in Section 6.04.

"IRS" shall mean the United States Internal Revenue Service.

"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 each of J.P. Morgan or any Affiliate of J.P. Morgan, Bank of America, N.A. or any Affiliate thereof, Wells Fargo Bank, N.A. or any Affiliate thereof and any other Lender reasonably acceptable to the Borrower and the Administrative Agent (such consent not to be unreasonably withheld or delayed by either party) who agrees to issue Letters of Credit, or any replacement issuer appointed pursuant to Section 2.19. References herein to the term "Issuing Bank" in singular form shall be deemed to refer to Issuing Banks in plural form, as the context shall require.

"Issuing Bank Fee" shall have the meaning assigned to such term in Section 2.12(c).

"Joint Venture" shall mean a joint venture or similar arrangement, whether in corporate, partnership or other legal form which is not a Subsidiary but in which the Borrower or any Subsidiary owns or controls any Equity Interests; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"J.P. Morgan" shall mean JPMorgan Chase Bank, N.A. and its affiliates.

"Judgment Currency" has the meaning assigned to such term in Section 9.24.

"Junior Lien" shall mean a Lien that is subordinated to the Liens securing the Obligations on terms satisfactory to the Administrative Agent.

"LC Application" shall mean an application by the Borrower to an Issuing Bank for issuance of a Letter of Credit, in form reasonably satisfactory to the applicable Issuing Bank.

"LC Conditions" shall mean the following conditions necessary for issuance of a Letter of Credit: (a) after giving effect to such issuance, the total LC Obligations do not exceed the Aggregate Letter of Credit Subline (and the aggregate amount of LC Obligations of the applicable Issuing Bank shall not exceed the Letter of Credit Subline of such Issuing Bank, unless the applicable Issuing Bank otherwise agrees); (b) each Letter of Credit shall expire not later than the earlier of (i) 365 days from issuance (or such longer period as may be agreed between the applicable Issuing Bank and the Borrower) and (ii) the fifth Business Day prior to the Revolver Termination Date; provided that any Letter of Credit may provide for an automatic renewal thereof for additional periods of up to 365 days (which in no event shall extend beyond the date referred to in clause (b)(ii), except to the extent Cash Collateralized at 105% of the Stated Amount thereof or backstopped pursuant to arrangements reasonably acceptable to the relevant Issuing Bank); (c) the Letter of Credit and payments thereunder are denominated in Dollars; and (d) the form of the proposed Letter of Credit is satisfactory to the Administrative Agent and the applicable Issuing Bank in their reasonable discretion.

"LC Disbursement" shall mean any payment made by an Issuing Bank pursuant to a Letter of Credit.

"LC Documents" shall mean all documents, instruments and agreements (including LC Requests and LC Applications) delivered by the Borrower or any other Person to an Issuing Bank or the Administrative Agent in connection with any Letter of Credit.

"LC Exposure" shall mean, with respect to any Lender at any time, such Lender's Pro Rata share of the aggregate LC Obligations at such time.

"LC Obligations" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower.

"LC Request" shall mean a request for issuance of a Letter of Credit, to be provided by the Borrower to an Issuing Bank, in form satisfactory to the applicable Issuing Bank.

"Lead Arranger" shall mean J.P. Morgan.

"Lender" shall mean each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 9.04), as well as any Person that becomes a "Lender" hereunder in accordance with Section 9.04.

"Lender Parent" shall mean, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender Party" shall mean the Administrative Agent, each Issuing Bank, or any other Lender.

"Lending Office" shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

"Letter of Credit" shall mean each letter of credit issued by an Issuing Bank pursuant to this Agreement and shall include each Existing Letter of Credit, and the term "Letter of Credit" shall mean any one of them or each of them singularly, as the context may require.

"Letter of Credit Increase Event" shall mean, at any time after the Closing Date, the occurrence of each of the following events: (i) the Borrower delivers a written notice to the Administrative Agent requesting an increase of the Aggregate Letter of Credit Subline, (ii) one or more Lenders then party to this Agreement (including any existing Issuing Bank) agree to issue Letters of Credit in an aggregate principal amount equal to such requested increased amount (for the avoidance of doubt, no Issuing Bank is under any obligation to increase its Letter of Credit Subline) and (iii) Schedule 2.01B to this Agreement is amended to reflect the Letter of Credit Subline of each Issuing Bank after giving effect to the Letter of Credit Increase Event; it being understood that such amendment to Schedule 2.01B shall only require the consent of the Borrower, the Administrative Agent and each Issuing Bank agreeing to increase its Letter of Credit Subline or otherwise changing its Letter of Credit Subline, in each case, as of the date of the Letter of Credit Increase Event. It is understood and agreed that the Aggregate Letter of Credit Subline may not exceed $50.0 million at any time.

"Letter of Credit Subline" shall mean, for any Issuing Bank, the amount set forth opposite such Issuing Bank's name on Schedule 2.01B as such schedule may be modified from time to time after the Closing Date in accordance with the terms hereof; provided that, as to any Issuing Bank, the Letter of Credit Subline of such Issuing Bank shall not exceed the amount set forth opposite such Issuing Bank's name on Schedule 2.01B as in effect on the Closing Date, unless the applicable Issuing Bank otherwise agrees. For the avoidance of doubt, the Letter of Credit Sublines are part of, and not in addition to, the Revolver Commitments.

"Liabilities" shall mean any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any applicable Interest Period or for any CBFR Borrowing, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period"), then the LIBO Rate shall be the Interpolated Rate, subject to Section 2.14 in the event that the Administrative Agent shall conclude that it shall not be possible to determine such Interpolated Rate (which conclusion shall be conclusive and binding absent manifest error). Notwithstanding the above, to the extent that "LIBO Rate" or "Adjusted LIBO Rate" is used in connection with an CBFR Borrowing, such rate shall be determined as modified by the definition of Adjusted One Month LIBOR Rate.

"LIBO Screen Rate" shall mean, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFR Borrowing, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than 0.50%, such rate shall be deemed to 0.50% for the purposes of this Agreement; provided further, that the foregoing shall not be applicable to determine the "Adjusted One Month LIBOR Rate" and the "CBFR".

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Lien Waiver" shall mean an agreement, in form reasonably satisfactory to the Administrative Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store the Collateral as permitted hereunder; and (b) for any Collateral held by a warehouseman, processor, shipper, customs broker (including pursuant to a Customs Broker Agreement) or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents (as defined in the Collateral Agreement) in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request, in accordance with such agreement.

"Line Cap" shall mean, at any time of determination, an amount equal the lesser of (a) the aggregate amount of all Revolver Commitments and (b) the then applicable Borrowing Base.

"Liquidity Event" shall mean the occurrence of a date when (a) Availability on such date shall have been less than the greater of (i) 17.5% of the Line Cap and (ii) $20.0 million, in either case for five consecutive Business Days, until such date as (b) Availability on such date shall have been at least equal to the greater of (i) 17.5% of the Line Cap and (ii) $20.0 million for 30 consecutive calendar days.

"LLC" shall mean any Person that is a limited liability company under the laws of its jurisdiction of formation.

"Loan" shall mean any Revolver Loan, Protective Advance or Overadvance Loan.

"Loan Documents" shall mean, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, the Security Documents, each compliance certificate, the Intercreditor Agreement, any subordination agreement, and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, notices, LC Documents and any agreements between the Borrower and any Issuing Bank regarding such Issuing Bank's Letter of Credit Subline or the respective rights and obligations between the Borrower and any Issuing Bank in connection with the issuance by such Issuing Bank of Letters of Credit, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" shall mean Holdings, the Borrower, the Subsidiary Guarantors and any Parent Entity, in lieu of Holdings, that has executed and delivered an assumption agreement in substantially the form of Exhibit D to the Collateral Agreement and become a "Guarantor" and "Grantor" thereunder.

"Local Time" shall mean Dallas time.

"Margin Stock" shall mean margin stock within the meaning of Regulations T, U and X, as applicable.

"Material Adverse Effect" shall mean a material adverse change in, or material adverse effect on (a) the business, assets, financial condition or results of operations, in each case of Holdings, the Borrower and the Subsidiaries, taken as a whole, (b) the validity or enforceability of the Loan Documents, (c) the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents, (d) the Collateral, or the Administrative Agent's Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (e) the rights and remedies (taken as a whole) of the Administrative Agent, the Issuing Banks and the Lenders under the Loan Documents.

"Material Agreement" shall mean, (a) the General Unsecured Cash Fund Escrow Agreement and (b) any other contract or agreement pursuant to which Holdings or its Subsidiaries is a party that if breached could reasonably be expected to cause a Material Adverse Effect.

"Material Indebtedness" shall mean, collectively, (i) the Term Loan Obligations and (ii) any Indebtedness (other than the Loans and Letters of Credit), of any one or more of Holdings and its Subsidiaries in an aggregate principal amount exceeding $5.0 million.

"Material Intellectual Property" means any intellectual property that, individually or collectively, (a) is (i) necessary to the business of the Borrower and its Subsidiaries as currently conducted or (ii) is otherwise material to the business or operations of the Borrower and its Subsidiaries, taken as a whole, or (b) has a fair market value (as reasonably determined by the Borrower in good faith) in excess of $1.0 million.

"Maximum Rate" shall have the meaning assigned to such term in Section 9.09.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage" shall mean any mortgage, deed of trust or other agreement in form and substance reasonably satisfactory to the Administrative Agent, which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on the applicable Real Property, including any amendment, restatement, modification or supplement thereto.

"Mortgageable Real Property" shall mean (a) any fee owned real property and related fixtures that is adjacent to, contiguous with or necessary or related to or used in connection with any real property then subject to a Mortgage in favor of the Administrative Agent, or (b) any other fee owned real property and related fixtures that either (i) has a fair market value in an amount equal to or greater than $1.0 million (or if an Event of Default has occurred and is continuing, then regardless of the fair market value of such real property and related fixtures) or (ii) is subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Obligations. For the avoidance of doubt, no real property that is subject to the Sale Leaseback shall be "Mortgageable Real Property."

"Mortgaged Properties" shall mean the fee owned real properties of the Loan Parties encumbered by a Mortgage pursuant to Section 5.09, if any.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six (6) plan years made or accrued an obligation to make contributions.

"Net Income" shall mean, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) other than as otherwise set forth in the definition of "Pro Forma Basis," the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or requirement of law applicable to such Subsidiary.

"Non-Consenting Lender" shall have the meaning assigned to such term in Section 2.19(c).

"Note" shall have the meaning assigned to such term in Section 2.09(d).

"Noticed Bank Product" shall mean Bank Product Obligations arising under a Bank Product, in respect of which the notice delivered to the Administrative Agent pursuant to Section 2.23 by the applicable Secured Bank Product Provider and the Borrower (as required under the definition of "Secured Bank Product Provider") confirms that such Bank Product Obligations shall be deemed a "Noticed Bank Product" hereunder for all purposes, including the application of Availability Reserve and Section 7.02, so long as no Overadvance would result from establishment of a Bank Product Reserve with respect to such Bank Product Obligations; provided that, if the amount of Secured Bank Product Obligations arising under such Bank Product is increased in accordance with the definition of "Secured Bank Product Obligations", then such Secured Bank Product Obligations shall only constitute a Noticed Bank Product to the extent that a Bank Product Reserve can be established with respect to such Bank Product Obligations without resulting in an Overadvance. For the avoidance of doubt, (a) so long as J.P. Morgan or one of its Affiliates is the Administrative Agent, neither J.P. Morgan nor any of its Affiliates providing Bank Products for any Loan Party or any Subsidiary of a Loan Party shall be required to provide any notice in respect of such Bank Products and (b) all Bank Product Obligations set forth in Schedule 1.01(a) as of the date hereof shall constitute Noticed Bank Products.

"Noticed Swap Agreement" shall mean Swap Agreement Obligations arising under a Swap Agreement, in respect of which the notice delivered to the Administrative Agent pursuant to Section 2.23 by the applicable Secured Swap Provider and the Borrower (as required under the definition of "Secured Swap Provider") confirms that such Swap Agreement shall be deemed a "Noticed Swap Agreement" hereunder for all purposes, including the application of Availability Reserve and Section 7.02, so long as no Overadvance would result from establishment of a Swap Obligations Reserve with respect to such Swap Agreement Obligations; provided that, if the amount of Secured Swap Obligations arising under such Swap Agreement is increased in accordance with the definition of "Secured Swap Obligations" then such Secured Swap Obligations shall only constitute a Noticed Swap Agreement to the extent that a Swap Obligations Reserve can be established with respect to such Swap Agreement Obligations without resulting in an Overadvance. For the avoidance of doubt, so long as J.P. Morgan or one of its Affiliates is the Administrative Agent, neither J.P. Morgan nor any of its Affiliates having Swap Agreements with any Loan Party or any Subsidiary of a Loan Party shall be required to provide any notice in respect of such Swap Agreements.

"NYFRB" shall mean the Federal Reserve Bank of New York.

"NYFRB Rate" shall mean, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" shall mean the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than 1.50%, such rate shall be deemed to be 1.50% for purposes of this Agreement.

"NYFRB's Website" shall mean the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Obligations" shall mean for purposes of the Loan Documents, all obligations of every nature of each Loan Party from time to time owed to the Agents (including former Agents) or the Lenders, under any Loan Document, whether for principal, interest (including interest, fees and other amounts which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any such Obligation, whether or not a claim is allowed against such Loan Party for such interest, fees and other amounts in the related bankruptcy proceeding), LC Obligations, fees, expenses, indemnification or otherwise. For the avoidance of doubt, Revolver Loans made pursuant to any Revolver Commitment Increases incurred under Section 2.22 shall constitute Obligations.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Operating Account" shall mean the Borrower's main operating Deposit Account (account no.: xxxxxx7526) held at Wells Fargo Bank, N.A. or any successor Deposit Account approved by the Administrative Agent.

"Osmium/Tensile" means Osmium Partners, LLC, Tensile Capital Management, LLC and their respective Affiliates.

"Other Liabilities" shall mean any obligation on account of (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (b) any transaction which arises out of any Bank Product or any Swap Agreement entered into with any Loan Party, as each may be amended from time to time.

"Other Taxes" shall mean any and all present or future stamp, court, intangible, recording, filing, documentary, excise, property or similar Taxes arising from any payment made hereunder or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto.

"Overadvance" shall have the meaning assigned to such term in Section 2.24.

"Overadvance Loan" shall mean a CBFR Loan made when an Overadvance exists or is caused by the funding thereof.

"Overnight Bank Funding Rate" shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the

NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Paid in Full" or "Payment in Full" means, (a) the payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Banks, in an amount equal to 105% of the outstanding LC Obligations as of the date of such payment), (c) the payment in full in cash of all accrued and unpaid fees, (d) the payment in full in cash of all reimbursable expenses and other Secured Obligations (other than obligations for taxes, indemnification, charges and other inchoate or contingent or reimbursable liabilities for which no claim or demand for payment has been made or, in the case of indemnification, no notice has been given (or, in each case, reasonably satisfactory arrangements have otherwise been made) and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Revolver Commitments, and (f) the termination of the Secured Swap Obligations and the Secured Bank Product Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

"Parent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Parent Entity" shall mean any of (i) Holdings and (ii) any other Person of which Holdings is a Subsidiary.

"Participant" shall have the meaning assigned to such term in Section 9.04(g).

"Participant Register" shall have the meaning assigned to such term in Section 9.04(g).

"Payment Conditions" shall mean as to any relevant action contemplated in this Agreement, (i) no Event of Default has then occurred and is continuing or would result from any action, (ii) Availability on a Pro Forma Basis immediately after giving effect to such action would be greater than the greater of (A) $25.0 million and (B) 25% of the Line Cap at all times over the sixty (60) consecutive days prior to consummation of such action, and also on a Pro Forma Basis for such action, and (iii) delivery to Administrative Agent at least three (3) Business Days and not more than five (5) Business Days (or such shorter or longer period of time, as applicable, as may be agreed by the Administrative Agent in its sole discretion) prior to the date of the proposed action of a certificate of the Borrower signed by a Financial Officer of the Borrower giving notice of the intent to consummate such action and certifying compliance with the foregoing conditions (including calculations of Availability).

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Perfection Certificate" shall mean a certificate in form reasonably satisfactory to the Administrative Agent that provides information with respect to the Loan Parties and the Property of each Loan Party.

"Permitted Business Acquisition" shall mean any acquisition by the Borrower or any other Loan Party of all or substantially all of the assets of, or All Outstanding Equity Interests in, a Person or division or line of business of a Person, provided that: (i) on the date of execution of the purchase agreement in respect of such acquisition, no Event of Default shall have occurred and be continuing or would result therefrom; (ii) if the aggregate total consideration to be paid by the Borrower or any Subsidiary exceeds $2.5 million, the Borrower shall have delivered to the Administrative Agent at least five (5) days prior to such acquisition a certificate of a Responsible Officer of the Borrower to such effect, together with all financial information for such Subsidiary or assets that is reasonably requested by the Administrative Agent and available to the Borrower; (iii) if (with respect to any acquisition of a Person or any Equity Interests in a Person) the acquired Person shall not become a Subsidiary Guarantor or (with respect to any acquisition of assets) the assets shall be acquired by a Subsidiary that is not a Subsidiary Guarantor, the aggregate amount of cash or property paid by the Loan Parties in connection with such acquisition shall not exceed amounts permitted by Sections 6.04(q) or (r); and (iv) the Payment Conditions shall be satisfied on a Pro Forma Basis for such Permitted Business Acquisition.

"Permitted Discretion" shall mean a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset based lender) business judgment and as it relates to the imposition of exclusionary criteria shall require that the effect

of any adjustment or imposition of exclusionary criteria be a reasonable quantification (as reasonably determined by the Administrative Agent) of any impact on the incremental net realizable value of the assets included in the Borrowing Base attributable to such contributing factors.

"Permitted Investments" shall mean:

(a) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two (2) years;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within one hundred eighty (180) days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250.0 million and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher by at least one (1) nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than one hundred eighty (180) days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one (1) year after the date of acquisition, issued by a corporation organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-2 (or higher) according to Moody's, or A-1 (or higher) according to S&P;

(e) securities with maturities of two (2) years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above; and

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5.0 billion.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium thereon, any committed or undrawn amounts and underwriting discounts, fees, commissions and expenses, associated with such Permitted Refinancing Indebtedness), except as otherwise permitted under Section 6.01, (b) other than with respect to Indebtedness permitted pursuant to Section 6.01(h) and Section 6.01(i), such Permitted Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is (i) by its terms subordinated in right of payment to the Obligations under this Agreement or (ii) unsecured Indebtedness, such Permitted Refinancing Indebtedness shall (A) (x) be subordinated in right of payment to such Obligations on terms not materially less favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, taken as a whole, or (y) remain unsecured, respectively, and (B) have a final maturity date equal to or later than one hundred eighty (180) days after the Revolver Termination Date, (d) no Permitted Refinancing Indebtedness shall have obligors or contingent obligors that were not obligors or contingent obligors (or that would not have been required to become obligors or contingent obligors) in respect of the Indebtedness being Refinanced except to the extent otherwise permitted under Section 6.01 or Section 6.04, and (e) if the Indebtedness being Refinanced is (or would have been required to be) secured with any ABL Priority Collateral, such Permitted Refinancing Indebtedness shall (x) be secured by a Junior Lien with respect to the ABL Priority Collateral pursuant to an intercreditor arrangement reasonably satisfactory to the Administrative Agent and (y) have a final maturity date equal to or later than one hundred

eighty (180) days (or ninety (90) days in the case of Indebtedness permitted pursuant to Section 6.01(j)) after the Revolver Termination Date.

"Person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, individual or family trust, or other organization (whether or not a legal entity), or any government or any agency or political subdivision thereof.

"Petition Date" shall have the meaning assigned such terms in the recitals to this Agreement.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" shall mean 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

"Plan of Reorganization" shall have the meaning assigned to such term in the recitals to this Agreement.

"Prepetition Credit Agreement" shall mean that Credit Agreement, dated as of August 18, 2015, as amended, among the Borrower, the guarantors thereunder, the lenders party thereto from time to time, JPMorgan Chase Bank, N.A., as administrative agent, and the other agents and parties party thereto from time to time.

"primary obligor" shall have the meaning assigned to such term in the definition of "Guarantee."

"Prime Rate" shall mean the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Pro Forma Basis" shall mean, as to any calculation of the Consolidated Fixed Charge Coverage Ratio for any events as described below that occur subsequent to the commencement of any period of four (4) consecutive quarters (the "Reference Period") for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the Reference Period (it being understood and agreed that (x) unless otherwise specified, such Reference Period shall be deemed to be the four (4) consecutive fiscal quarters ending on the last day of the most recently ended fiscal quarter of the Borrower and its Subsidiaries for which financial statements are available and such pro forma adjustments shall be excluded to the extent already accounted for in the calculation of EBITDA for such period and (y) if any Person that became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Subsidiary shall have experienced any event requiring adjustments pursuant to this definition, then such calculation shall give pro forma effect thereto for such period as if such event occurred at the beginning of such period): (i) in making any determination of EBITDA, pro forma effect shall be given to any asset disposition of a Subsidiary, line of business, to any asset acquisition, any discontinued operation or any operational change, in each case that occurred during the Reference Period (or, in the case of determinations made with respect to any action the taking of which hereunder is subject to compliance on a Pro Forma Basis or otherwise with the Consolidated Fixed Charge Coverage Ratio (any such action, a "Restricted Action") occurring during the Reference Period or thereafter and through and including the date of such determination) and (ii) in making any determination on a Pro Forma Basis, (x) all Indebtedness (including Indebtedness incurred or assumed and for which the financial effect is being calculated, whether incurred under this Agreement or

otherwise, but excluding normal fluctuations in revolving Indebtedness incurred for working capital purposes) incurred or permanently repaid, returned, redeemed or extinguished during the Reference Period (or, in the case of determinations made with respect to any Restricted Action, occurring during the Reference Period or thereafter and through and including the date of such determination) shall be deemed to have been incurred or repaid, returned, redeemed or extinguished at the beginning of such period (it being understood that for purposes of any calculation of the Consolidated Fixed Charge Coverage Ratio, the use of proceeds of any such Indebtedness shall be taken into account in such calculation) and (y) Interest Expense of such Person attributable to (A) interest on any Indebtedness, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination as if such rate had been actually in effect during the period for which pro forma effect is being given taking into account any interest hedging arrangements applicable to such Indebtedness, (B) any Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP and (C) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Subsidiary may designate.

Pro forma calculations made pursuant to the definition of the term "Pro Forma Basis" shall be determined in good faith by a Responsible Officer of the Borrower and, for any fiscal period ending on or prior to the first anniversary of any such asset acquisition, asset disposition, discontinued operation or operational change, may include adjustments to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from such asset acquisition, asset disposition, discontinued operation, operational change, and for purposes of determining compliance with the Consolidated Fixed Charge Coverage Ratio such adjustments may reflect additional operating expense reductions and other additional operating improvements and synergies that would be includable in pro forma financial statements prepared in accordance with Regulation S-X and such other adjustments not includable in Regulation S-X under the Securities Act for which substantially all of the steps necessary for the realization thereof have been taken and are reasonably anticipated by the Borrower to be realized in the next twelve (12)-month period following the consummation thereof and, are estimated on a good faith basis by the Borrower; provided, however that the aggregate amount of any such adjustments shall not exceed (together with the aggregate add back to EBITDA pursuant to clauses (a)(iv) and (a)(v) of the definition thereof with respect to the applicable four (4) fiscal quarter period) 20% of the EBITDA of the Borrower and the Subsidiaries for any four (4) fiscal quarter period (prior to giving effect to any add back pursuant to clauses (a)(iv) and (a)(v) of the definition of "EBITDA" or any pro forma adjustments pursuant to this definition). The Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower setting forth such demonstrable or additional operating expense reductions and other operating improvements or synergies and information and calculations supporting them in reasonable detail.

"Pro Rata" shall mean with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) while Revolver Commitments are outstanding, by dividing the amount of such Lender's Revolver Commitment by the aggregate amount of all Revolver Commitments; and (b) at any other time, by dividing the amount of such Lender's Loans and LC Obligations by the aggregate amount of all outstanding Loans and LC Obligations.

"Prohibited Transaction" shall have the meaning assigned to such term in Section 406 of ERISA and/or Section 4975(c) of the Code.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including cash, securities, accounts, contract rights and Equity Interests or other ownership interests of any Person), whether now in existence or owned or hereafter acquired.

"Protective Advances" shall have the meaning assigned to such term in Section 2.25.

"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.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.21.

"Qualified Capital Stock" shall mean any Equity Interest of any Person that does not by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (a) provide for scheduled payments of dividends in cash (other than at the option of the issuer) prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Revolver Termination Date, (b) become mandatorily redeemable at the option of the holder thereof (other than for Qualified Capital Stock or pursuant to customary provisions relating to redemption upon a change of control or sale of assets) pursuant to a sinking fund obligation or otherwise prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Revolver Termination Date or (c) become convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests that are not Qualified Capital Stock; provided further, that if any such Equity Interest is issued pursuant to a plan for the benefit of the employees, directors, officers, managers or consultants of Holdings (or any Parent Entity thereof), the Borrower or its Subsidiaries or by any such plan to such Persons, such Equity Interest shall not be regarded as an Equity Interest not constituting Qualified Capital Stock solely because it may be required to be repurchased by Holdings (any Parent Entity), the Borrower or its Subsidiaries in order to satisfy applicable regulatory obligations.

"Real Property" shall have the meaning assigned to such term in Section 3.07(c).

"Real Property Documents" shall mean, with respect to any real property, (a) a FIRREA compliant appraisal of such real property from appraisers engaged by the Administrative Agent, (b) Flood Documentation reasonably satisfactory to the Administrative Agent and each Regulated Lender Entity, (c) survey documentation reasonably satisfactory to the Administrative Agent, (d) a Title Insurance Policy, (e) opinions addressed to the Administrative Agent and the Lenders of (i) local counsel in each jurisdiction where the Mortgaged Property is located with respect to the enforceability of the Mortgages and other matters customarily included in such local law opinions and (ii) counsel for the Borrower regarding due authorization, execution and delivery of the Mortgages, in each case, in form and substance reasonably satisfactory to the Administrative Agent, (f) such other requirements or documents as may be reasonably requested by the Administrative Agent and Required Lenders and (g) any other documentation or confirmation required to be delivered or made pursuant to Section 5.09(f) and Section 5.09(g).

"Reference Period" shall have the meaning assigned to such term in the definition of "Pro Forma Basis."

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

"Refinance" shall have the meaning assigned to such term in the definition of the term "Permitted Refinancing Indebtedness," "Refinancing" and "Refinanced" shall have meanings correlative thereto.

"Refunding Capital Stock" shall have the meaning assigned to such term in Section 6.06(i).

"Register" shall have the meaning assigned to such term in Section 9.04(e).

"Regulated Lender Entity" shall have the meaning assigned to such term in Section 5.09(f).

"Regulation D" shall mean Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" shall mean Regulation T of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Reimbursement Date" shall have the meaning assigned to such term in Section 2.05(b)(i).

"Related Fund" shall mean, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (i) such Lender, (ii) an Affiliate of such Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates; provided that, with respect to any Issuing Bank, "Related Parties" shall include its branches and its correspondent and advising banks.

"Release" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment. "Released" shall have a meaning correlative thereto.

"Relevant Governmental Body" shall mean the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB or any successor thereto.

"Rent and Charges Reserve" shall mean the aggregate of (a) all past due rent and other amounts due and owing by a Loan Party to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Eligible Inventory and could legally assert a Lien on any Inventory; and (b) a reserve at least equal to two months' rent and other periodic charges that would reasonably be expected to be payable to any such Person, unless it has executed a Lien Waiver, in each case, excluding any amounts being disputed in good faith; provided, that clause (b) shall only apply to locations in jurisdictions that are landlord lien priming jurisdictions.

"Rent Expense" shall mean, for any period, the consolidated rent expense of the Borrower and its Subsidiaries, as determined in accordance with GAAP.

"Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Report" shall mean reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrower, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code), other than those events as to which the thirty (30)-day notice period referred to in Section 4043(c) of ERISA has been waived.

"Required Lenders" shall mean, at any time, the Lenders holding more than 50% of the aggregate amount of Revolver Commitments and Aggregate Revolving Exposure outstanding at any time; provided, however the Revolver Commitments and Revolving Exposure of any Defaulting Lender shall be excluded from such calculation; provided further, that if the number of Lenders, excluding Defaulting Lenders, is greater than one (1) Lender (including any Lender's Affiliates as one (1) Person for this purpose), Required Lenders must include at least two (2) unaffiliated Lenders.

"Resolution Authority" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restricted Action" shall have the meaning assigned to such term in the definition of "Pro Forma Basis."

"Restricted Debt Payment" shall have the meaning assigned to such term in Section 6.09(b).

"Restricted Payment" shall have the meaning assigned to such term in Section 6.06.

"Reuters" shall mean, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

"Revolver Commitment" shall mean for any Lender, its obligation to make Revolver Loans and to participate in LC Obligations, Overadvance Loans and Protective Advances up to the maximum principal amount shown on Schedule 2.01, as hereafter modified pursuant to an Assignment and Acceptance to which it is a party. "Revolver Commitments" shall mean the aggregate amount of such commitments of all Lenders.

"Revolver Commitment Increase" shall have the meaning assigned to such term in Section 2.22(a).

"Revolver Commitment Increase Notice" shall have the meaning assigned to such term in Section 2.22(b).

"Revolver Loans" shall mean a loan made pursuant to Section 2.01.

"Revolver Termination Date" shall mean December 31, 2023.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Revolver Loans and its LC Exposure at such time, *plus* (b) an amount equal to its Pro Rata share of the aggregate principal amount of Protective Advances outstanding at such time, *plus* (c) an amount equal to its Pro Rata share of the aggregate principal amount of Overadvances outstanding at such time.

"Revolving Facility Percentage" shall mean, with respect to any Lender, the percentage of the total Revolver Commitments represented by such Lender's Revolver Commitment. If the Revolver Commitments have terminated or expired, the Revolving Facility Percentages shall be determined based upon the Revolver Commitments most recently in effect, giving effect to any assignments pursuant to Section 9.04.

"Rights Offerings" shall have the meaning assigned to such term in the Plan of Reorganization.

"S&P" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Lease-Back Transaction" shall have the meaning assigned to such term in Section 6.03.

"Sale Leaseback" shall have the meaning assigned to such term in the Plan of Reorganization.

"Sanctioned Country" shall mean, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, 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 OFAC, the U.S. Department of State, the or by the United Nations Security Council, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person directly or indirectly owned or controlled (individually or in the aggregate) by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject, or target, of any Sanctions.

"Sanctions" shall mean individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Secured Bank Product Obligations" shall mean Bank Product Obligations, including, without limitation, the Bank Product Obligations set forth in Schedule 1.01(a) as of the date hereof, owing to a Secured Bank Product Provider, up to the maximum amount (in the case of any Secured Bank Product Provider other than J.P. Morgan and its Affiliates so long as J.P. Morgan is the Administrative Agent) reasonably specified by such provider in writing to the Administrative Agent, which amount may be established or increased (by further written notice to the Administrative Agent from time to time in accordance with Section 2.23) as long as no Default or Event of Default exists.

"Secured Bank Product Provider" shall mean (a) J.P. Morgan or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing and any Person that was a Lender or an Affiliate or a Lender at the time it provided a Bank Product (provided such provider delivers written notice to the Administrative Agent in accordance with Section 2.23 and otherwise in form and substance reasonably satisfactory to the Administrative Agent, which has been countersigned by the Borrower to designate such Bank Product as a Secured Bank Product Obligation, (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 8.12).

"Secured Obligations" shall mean the Obligations, the Secured Swap Obligations and the Secured Bank Product Obligations.

"Secured Parties" shall mean (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each Secured Bank Product Provider, to the extent the Bank Product Obligations in respect thereof constitute Secured Obligations, (e) each Secured Swap Provider, to the extent the Swap Agreement Obligations in respect thereof constitute Secured Obligations and (f) the successors and assigns of each of the foregoing.

"Secured Swap Obligations" shall mean Swap Agreement Obligations owing to a Secured Swap Provider, up to the maximum amount (in the case of any Secured Swap Provider other than J.P. Morgan and its Affiliates so long as J.P. Morgan is the Administrative Agent) reasonably specified by such provider in writing to the Administrative Agent, which amount may be established or increased (by further written notice to the Administrative Agent from time to time in accordance with Section 2.23) as long as no Default or Event of Default exists.

"Secured Swap Provider" shall mean (a) J.P. Morgan or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing and any Person that was a Lender or an Affiliate or a Lender at the time it provided a Swap Agreement to a Loan Party (provided such provider delivers written notice to the Administrative Agent in accordance with Section 2.23 and otherwise in form and substance reasonably satisfactory to the Administrative Agent, which has been countersigned by the Borrower to designate such Swap Agreement as a Secured Swap Obligation, (i) describing the Swap Agreement 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 8.12).

"Securities Act" shall mean the Securities Act of 1933.

"Security Documents" shall mean the Mortgages, the Collateral Agreement and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured

Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, and Control Agreements now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"Shrink" shall mean Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"SOFR" shall mean, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

"SOFR Administrator" shall mean the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" shall mean the NYFRB's Website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Specified Bank Products" shall mean the Bank Products set forth on Part I of Schedule 1.01(a) as of the date hereof.

"Specified Event of Default" shall mean any Event of Default arising under Section 7.01(a) (solely relating to a material misrepresentation contained in any Borrowing Base Certificate), (b), (c), (d) (solely relating to a failure to comply with Section 5.12(c) or (d) or 6.10), (h), (i), (e)(i), (e)(ii) (solely relating to a failure to comply with Section 5.04(a) or (b)) or (m).

"Spring-Out Date" shall mean the first date following the first anniversary of the Closing Date on which Availability was at all times over the sixty (60) consecutive days prior to such date in excess of the greater of (a) $25.0 million and (b) 25% of the Line Cap.

"Stated Amount" shall mean at any time the maximum amount for which a Letter of Credit may be honored as provided in Section 1.10.

"Statutory Reserve Rate" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" shall mean any unsecured Indebtedness of the Borrower or any Subsidiary that is expressly subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent.

"Subordinated Intercompany Debt" shall have the meaning assigned to such term in Section 6.01(d).

"Subsidiary" shall mean any direct or indirect subsidiary of the Borrower or a Loan Party, as applicable.

"subsidiary" shall mean, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, by the parent and/or one or more subsidiaries of the parent.

"Subsidiary Guarantor" shall mean each Loan Party other than Holdings and the Borrower.

"Supermajority Lenders" shall mean the Lenders holding more than 66⅔% of the aggregate amount of Revolver Commitments and the Aggregate Revolving Exposure outstanding at any time; provided, however that (i) the Revolver Commitments

and Revolving Exposure of any Defaulting Lender shall be excluded from such calculation and (ii) if the number of Lenders, excluding Defaulting Lenders, is greater than or equal to three (3) Lenders (including any Lender's Affiliates as one (1) Person for this purpose), Supermajority Lenders must include at least three (3) unaffiliated Lenders.

"Supported QFC" has the meaning assigned to it in Section 9.21.

"Swap Agreement" shall mean any agreement, contract, or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act and any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one (1) or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, provided that no phantom stock or other employee benefit plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or consultants of Holdings, the Borrower or any of their Subsidiaries shall be a Swap Agreement.

"Swap Agreement Obligations" means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

"Swap Obligation" shall mean, with respect to any Person, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Swap Obligations 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 Swap Obligations, which shall in any event include the maximum amount of all Noticed Swap Agreements in respect of Swap Agreement Obligations.

"Syndication Agents" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Tax and Trust Funds" means cash, cash equivalents or other assets comprised solely of (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party's employees in the current period (which may be monthly or quarterly, as applicable), (b) all taxes required to be collected, remitted or withheld in the current period (which may be monthly or quarterly, as applicable) (including, without limitation, federal and state withholding taxes (including the employer's share thereof)) and (c) any other funds which any Loan Party holds in trust or as an escrow or fiduciary for another person (which is not an Affiliate of a Loan Party) in the ordinary course of business and in connection with a transaction or arrangement not prohibited under this Agreement.

"Tax Distributions" shall have the meaning assigned to such term in Section 6.06(d).

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges), assessments, fees or withholdings imposed by any Governmental Authority and any and all interest and penalties related thereto.

"Term Loan Agent" shall mean Alter Domus (US) LLC, in its capacity as "Administrative Agent" under the Term Loan Agreement and the other Term Loan Documents, together with its successors and permitted assigns.

"Term Loan Agreement" shall mean that certain Credit Agreement dated as of the Closing Date, by and among the Borrower, the Guarantors, the lenders party thereto and the Collateral Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time to the extent permitted under the Intercreditor Agreement.

"Term Loan Documents" shall mean the "Loan Documents" as defined in the Term Loan Agreement.

"Term Loan Lenders" shall mean the "Lenders" under and as defined in the Term Loan Agreement.

"Term Loan Obligations" shall mean all obligations of the Loan Parties, which are incurred or owing under the Term Loan Documents, including all obligations in respect of the payment of principal, interest, fees, prepayment premiums and indemnification obligations, and obligations in respect of any refinancing of such Indebtedness permitted under this Agreement and under the Intercreditor Agreement; provided that such Indebtedness is subject to the Intercreditor Agreement.

"Term Loan Priority Collateral" shall have the meaning assigned such term in the Intercreditor Agreement.

"Term Loan Priority Collateral Account" shall mean a Deposit Account subject to the sole dominion and control of the Term Loan Agent which holds solely identifiable proceeds of Term Loan Priority Collateral pending reinvestment or the application thereof to the Term Loan Obligations in accordance with the Term Loan Documents and the Intercreditor Agreement.

"Term Loan Secured Parties" shall mean the Term Loan Agent and the Term Loan Lenders.

"Term Loans" shall mean those Term Loans borrowed by the Borrower pursuant to the Term Loan Agreement in the original aggregate principal amount of $25.0 million.

"Term SOFR" shall mean, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Term SOFR Notice" shall mean a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" shall mean the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

"Title Insurance Policy" shall mean a mortgagee's loan policy, in form and substance reasonably satisfactory to the Administrative Agent, together with all endorsements reasonably requested by the Administrative Agent, issued by or on behalf of a title insurance company reasonably satisfactory to the Administrative Agent, insuring the Lien created by a Mortgage in an amount and on terms reasonably satisfactory to the Administrative Agent, delivered to the Administrative Agent.

"Transaction Costs" shall mean fees and expenses payable or otherwise borne by Holdings, any other Parent Entity, the Borrower and its Subsidiaries in connection with the Transactions occurring on or about the Closing Date.

"Transactions" shall mean, collectively, the transactions to occur pursuant to the Loan Documents, including (a) the execution and delivery of the Loan Documents and the initial borrowings hereunder, (b) the execution and delivery of the Term Loan Documents and the initial borrowings thereunder and (c) the repayment of the Existing Debt.

"Type," when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted LIBO Rate and the CBFR.

"UK Financial Institutions" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of

the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Uniform Customs" shall have the meaning assigned to such term in Section 9.07.

"Unused Line Fee" shall have the meaning assigned to such term in Section 2.12(b).

"Unused Line Fee Rate" shall mean 0.50% per annum, calculated based upon the actual number of days elapsed over a 360-day.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" shall have the meaning assigned to such term in Section 9.21.

"U.S. Tax Compliance Certificate" shall have the meaning assigned to such term in Section 2.17(e)(i)(B)(3).

"USA PATRIOT Act" shall mean The Uniting and Strengthening America by Providing Adequate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the product obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including a payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth that will elapse between such date and the making of such payment); by (b) the outstanding principal amount of such Indebtedness.

"WF Concentration Account" shall mean the Borrower's Main Concentration Account No.: xxxxxx5063 held at Wells Fargo Bank, National Association or any successor Deposit Account approved by the Administrative Agent.

"WF Factored Receivables" shall mean any Accounts originally owed or owing by a Loan Party to another Person which have been purchased by or factored with Wells Fargo Bank, National Association or any of its Affiliates pursuant to a factoring arrangement or otherwise with the Person that sold the goods or rendered the services to the Loan Party which gave rise to such Account.

"WF Factoring Arrangement" shall mean the services and products provided to Borrower by Wells Fargo Bank, National Association ("WF") and one or more of its Affiliates, with respect to or in connection with WF Factored Receivables, in the maximum amount set forth in the applicable notice delivered to the Administrative Agent pursuant to Section 2.23 by WF, as the Secured Bank Product Provider, and Borrower.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" 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.

(a) The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof. 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." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, the Loan Documents in which the reference appears unless the context shall otherwise require.

(b) Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or other document, agreement or instrument (including any by-laws, limited partnership agreement, limited liability company agreement, articles of incorporation, certificate of limited partnership or certificate of formation, as the case may be) shall mean such Loan Document, agreement or instrument as amended, restated, amended and restated, supplemented, otherwise modified, replaced, renewed, extended or refinanced from time to time and any reference in this Agreement to any Person shall include a reference to such Person's permitted assigns and successors-in-interest.

Section 1.03 Accounting Terms.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; provided further that if an amendment is requested by the Borrower or the Required Lenders, then the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); provided further that 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 (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value," as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of Capital Lease Obligations, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the date hereof) that would constitute Capital Lease Obligations on the date hereof shall be considered Capital Lease Obligations and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms

of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change). Notwithstanding anything to the contrary, for all purposes under this Agreement (other than for purposes of Sections 5.04(a), (b) or (c)) and the other Loan Documents, including negative covenants, financial covenants and component definitions, GAAP will be deemed to treat operating leases and Capital Lease Obligations in a manner consistent with their treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

Section 1.04 Rounding. Except as otherwise expressly provided herein, any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one (1) place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day (other than as described in the definition of CBFR, NYFRB Rate or Interest Period), the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.06 Classification; Payment Conditions.

(a) For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, contractual restriction or prepayment of Indebtedness meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, the Borrower, in its sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category; provided that such transaction or item (or any portion thereof) may not be reclassified into Section 6.01(g), 6.04(r), 6.05(h), 6.06(h), 6.09(b) or 6.09(d).

(b) Not less than three (3) Business Days prior and not more than five (5) Business Days prior to the consummation of any Permitted Business Acquisition, Investment pursuant to Section 6.04(r), Disposition pursuant to Section 6.05(h), Restricted Payment pursuant to Section 6.06(h) or Restricted Debt Payment pursuant to Section 6.09(b) or Section 6.09(d), the Borrower shall deliver a certificate of a Responsible Officer of the Borrower certifying that as of the date of the applicable Permitted Business Acquisition, Investment, Disposition, Restricted Payment or Restricted Debt Payment, as applicable, the Payment Conditions will be satisfied on a pro forma basis after giving effect to such transaction together with reasonably detailed calculations of Availability.

Section 1.07 References to Laws. Unless otherwise expressly provided herein, references to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

Section 1.08 Pro Forma. Notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Consolidated Fixed Charge Coverage Ratio) pursuant to this Agreement shall be calculated in the manner prescribed by the definition of "Pro Forma Basis."

Section 1.09 Interest Rates; LIBOR Notification. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Sections 2.14(c) and (d) provide the mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.14(f) of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or

accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (a) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(c) or (d), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (b) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(e)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

Section 1.10 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any letter of credit agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Issuing Banks and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

Section 1.11 Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

Section 2.01 Revolver Commitments. Each Lender agrees, severally on a Pro Rata basis up to its Revolver Commitment, on the terms set forth herein, to make Revolver Loans to the Borrower from time to time from and after the Closing Date through the Commitment Revolver Termination Date. The Revolver Loans may be repaid and reborrowed as provided herein. In no event shall the Lenders have any obligation to honor a request for a Revolver Loan if the Aggregate Revolving Exposure outstanding at such time (including the requested Revolver Loan) would exceed the Line Cap.

Section 2.02 Loans and Borrowings.

(a) All Loans shall be made by the Lenders ratably in accordance with their respective Revolver Commitments. The failure of any Lender to make any Revolver Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.14, each Borrowing shall be (i) comprised entirely of CBFR Loans or Eurodollar Loans as the Borrower may request in accordance herewith and (ii) (x) in the case of Eurodollar Loans, in a minimum amount of $1,000,000, or an increment of $100,000 in excess thereof or (y) in the case of CBFR Loans, no minimum amount or predetermined increment shall apply. Each Lender at its option may make any CBFR Loan or Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such

Lender to make such Revolver Loan; provided that, any exercise of such option shall not affect the obligation of the Borrower to repay such Revolver Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) Borrowings of more than one Type may be outstanding at the same time; provided that, without the consent of the Administrative Agent, there shall not at any time be more than a total of ten (10) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolver Termination Date.

Section 2.03 Requests for Borrowings and Notices.

(a) To request a Borrowing of Revolver Loans, the Borrower shall notify the Administrative Agent of such request either by telephone, in writing (delivered by hand or fax) by delivering a Borrowing Request signed by the Borrower or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., Local Time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, not later than 12:00 p.m., Local Time, on the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request shall be confirmed promptly by hand delivery, fax or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such written or telephonic Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the Borrower's account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a CBFR Borrowing. If no Interest Period is specified with respect to a requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected a Eurodollar Borrowing with an Interest Period of one (1) month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Revolver Loan to be made as part of the requested Borrowing.

Section 2.04 [Reserved].

Section 2.05 Letters of Credit.

(a) Issuance of Letters of Credit. At any time on or after the Closing Date the Borrower may request any Issuing Bank, which request shall be irrevocable unless otherwise agreed by such Issuing Bank, to issue Letters of Credit denominated in Dollars as the applicant thereof for the support of it or its Subsidiaries' obligations from time to time until 30 days prior to the Revolver Termination Date (or until the Commitment Revolver Termination Date, if earlier), on the terms and subject to the conditions set forth herein, including the following:

(i) The Borrower acknowledges that any Issuing Bank's issuance of any Letter of Credit is conditioned upon such Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as such Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. No Issuing Bank shall have any obligation to issue any Letter of Credit unless (i) such Issuing Bank receives a LC Request and LC Application

at least 3 Business Days (or shorter period of time as may be agreed by the Administrative Agent and the applicable Issuing Bank in their reasonable discretion) prior to the requested date of issuance; and (ii) each LC Condition is satisfied. If, in sufficient time to act, the applicable Issuing Bank receives written notice from Required Lenders that a LC Condition has not been satisfied, such Issuing Bank shall not issue the requested Letter of Credit. Prior to receipt of any such notice, the applicable Issuing Bank shall not be deemed to have knowledge of any failure of the LC Conditions to be satisfied. In the event that a reallocation of the Fronting Exposure with respect to LC Obligations of a Defaulting Lender pursuant to Section 2.21(a) does not fully cover the Fronting Exposure with respect to LC Obligations of such Defaulting Lender and such Defaulting Lender has not Cash Collateralized its obligations or otherwise made arrangements reasonably satisfactory to the applicable Issuing Bank, the applicable Issuing Bank may require the Borrower to Cash Collateralize such remaining Fronting Exposure in respect of each outstanding Letter of Credit and will have no obligation to issue new Letters of Credit, or to extend, renew or amend existing Letters of Credit to the extent the Fronting Exposure with respect to LC Obligations would exceed the commitments of the non-Defaulting Lenders, unless such remaining Fronting Exposure with respect to LC Obligations is Cash Collateralized. In addition, an Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any requirement of law relating to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the 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

(B) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(ii) Letters of Credit may be requested by the Borrower to support obligations incurred in the ordinary course of business, to backstop or replace Existing Letters of Credit through the issuance of new Letters of Credit for the account of the issuers of such Existing Letters of Credit (including, by "grandfathering" such Existing Letters of Credit in this Agreement which shall, for the avoidance of doubt, be deemed issued pursuant to this Agreement), for any purpose permitted under this Agreement and the other Loan Documents or as otherwise approved by the Administrative Agent. The amendment, renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that delivery of a new LC Application may be required or waived at the discretion of the applicable Issuing Bank.

(iii) The Borrower assumes all risks of, and none of the Administrative Agent, any Issuing Bank or any Lender shall have any liability for, the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with issuance of any Letter of Credit, none of the Administrative Agent, any Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any LC Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any LC Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any LC Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or LC Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and the Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of the Issuing Banks, the Administrative Agent or any Lender, including any act or omission of a Governmental Authority. The Issuing Banks shall be fully subrogated to the rights and remedies of each beneficiary whose claims against the Borrower is discharged with proceeds of any Letter of Credit.

(iv) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, each Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by such Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Each Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any

action taken in good faith reliance upon, any advice given by such experts. The Issuing Banks may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents.

(v) Notwithstanding anything to the contrary in this Section 2.05(a), 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) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise reasonable care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of the applicable Issuing Bank.

(vi) For the avoidance of doubt, (a) no LC Documents shall (i) contain any representations and warranties, covenants or events of default not set forth in this Agreement and any representations and warranties, covenants and events of default shall be subject to the same qualifiers, exceptions and exclusions as those set forth in this Agreement or (ii) provide for any collateral security or Liens and (b) to the extent any of the foregoing provisions are contained therein and not contained herein, then such provisions shall be rendered null and void and any such qualifiers, exceptions and exclusions contained herein shall be deemed incorporated therein, mutatis mutandis.

(b) Reimbursement; Participations.

(i) If any Issuing Bank shall make any LC Disbursement under a Letter of Credit, the Borrower shall pay to such Issuing Bank, by 1:00 p.m. (Local Time) (or such later time as the Administrative Agent may agree) within one Business Day following receipt by the Borrower of notice from the relevant Issuing Bank ("Reimbursement Date"), the amount paid by such Issuing Bank under such Letter of Credit, together with interest at the interest rate for CBFR Loans from the Reimbursement Date until payment by the Borrower. The obligation of the Borrower to reimburse the applicable Issuing Bank for any LC Disbursement shall be absolute, unconditional, irrevocable and, subject to Section 2.05(a)(v), shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that the Borrower may have at any time against the beneficiary. Unless the Borrower notifies the Administrative Agent that it intends to reimburse the applicable Issuing Bank for a drawing under a Letter of Credit, whether or not the Borrower submits a Borrowing Request, the Borrower shall be deemed to have requested a Borrowing of CBFR Loans in an amount necessary to pay all amounts due to the applicable Issuing Bank on any Reimbursement Date and each Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Revolver Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in Section 4.02 are satisfied. Upon the issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from the applicable Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all LC Obligations relating to the Letter of Credit. If an Issuing Bank makes any LC Disbursement under a Letter of Credit and the Borrower does not reimburse such LC Disbursement on the Reimbursement Date, the Administrative Agent shall promptly notify the Lenders and each Lender shall promptly (within one Business Day) and unconditionally pay to the Administrative Agent, for the benefit of the applicable Issuing Bank, such Lender's Pro Rata share of such LC Disbursement.

(ii) The obligation of each Lender to make payments to the Administrative Agent for the account of an Issuing Bank in connection with such Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of: any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. 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 Documents. The Issuing Banks do not make to the Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Loan 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 Documents; 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 Loan Party.

(iii) No Issuing Bank 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, bad faith or willful misconduct as found in a final and nonappealable decision of a court of competent jurisdiction. No Issuing Bank shall have any liability to any Lender if such Issuing Bank refrains from any action under any Letter of Credit or LC Documents until it receives written instructions from Required Lenders.

(c) Cash Collateral. Except as otherwise provided herein, if any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default has occurred and is continuing, (b) that Availability is less than zero, (c) after the Commitment Revolver Termination Date, or (d) within 5 Business Days prior to the Revolver Termination Date, then the Borrower shall, at the Issuing Banks' or the Administrative Agent's request, Cash Collateralize the Stated Amount of all outstanding Letters of Credit (at 100% in the case of clause (b), and otherwise at 105%) and pay to the Issuing Banks the amount of all other LC Obligations. If the Borrower fails to provide any Cash Collateral as required hereunder, the Administrative Agent may (and shall upon direction of Required Lenders) advance, as Revolver Loans, the amount of the Cash Collateral required (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 4.02 are satisfied).

(d) [Reserved].

(e) Resignation or Removal of an Issuing Bank. Any Issuing Bank may resign at any time upon at least 30 days' prior written notice to the Administrative Agent and the Borrower. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. On the effective date of such resignation or replacement, the resigning or replaced Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under Sections 2.05, 8.06, and 9.05, relating to any Letter of Credit issued prior to such date. If after giving effect to any resignation or removal of an Issuing Bank in accordance with this Section 2.05(e) there would be no Issuing Bank under this Agreement, the Administrative Agent shall promptly appoint a replacement Issuing Bank, which, as long as no Event of Default under Sections 7.01(b), (c), (h) (with respect to Holdings and the Borrower only) and (i) (with respect to Holdings and the Borrower only) has occurred and is continuing, shall be reasonably acceptable to the Borrower.

(f) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank (other than J.P. Morgan) shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, and amendments, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends or extends any Letter of Credit, the date of such issuance, amendment or extension, and the Stated Amount of the Letters of Credit issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(g) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries. Notwithstanding anything to the contrary herein, an Issuing Bank shall not be under any obligation to issue any Letter of Credit for the

account of a Subsidiary unless such Issuing Bank has received all documentation and other information with respect to such Subsidiary required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

Section 2.06 Funding of Borrowings.

(a) Each Lender shall make a Revolver Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make the proceeds of such Revolver Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the date of the Borrowing Request that such Lender will not make available to the Administrative Agent such Lender's share of the Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower agrees to pay to the Administrative Agent (provided, that any such payment by the Borrower to the Administrative Agent is without prejudice to any claim the Borrower may have against such applicable Lender) forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Revolver Loan included in such Borrowing.

Section 2.07 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Revolver Loans comprising such Borrowing, and the Revolver Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Overadvance Loans or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election either by telephone, in writing (delivered by hand or fax) by delivering an Interest Election Request signed by the Borrower, or through Electronic System if arrangements for doing so have been approved by the Administrative Agent by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and each such telephonic Interest Election Request shall be confirmed promptly (but in any event on the same Business Day) by hand delivery, fax or other Electronic System to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each written or telephonic Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing;

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) following any notice from the Administrative Agent contemplated by clause (e) of this Section 2.07, as of the date of such Interest Election Request, no event shall have occurred and be continuing or would result from the consummation of the conversion and/or continuation contemplated thereby that would constitute an Event of Default.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a CBFR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

Section 2.08 Repayment of Loans; Termination of Revolver Commitments.

(a) All Loans shall be due and payable in full on the Revolver Termination Date, unless payment is sooner required hereunder.

(b) The Revolver Commitments shall terminate on the Revolver Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least 3 days (or such shorter period of time as the Administrative Agent may agree in its reasonable discretion) prior written notice to the Administrative Agent at any time, the Borrower may, at its option, terminate the Revolver Commitments and this Agreement. Any notice of termination given by the Borrower shall be irrevocable; provided that such notice may state that such notice is conditioned upon the effectiveness of other credit facilities or transactions, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. On the Revolver Termination Date, the Borrower shall cause the Obligations to be Paid in Full.

(c) The Borrower may permanently reduce the Revolver Commitments, on a Pro Rata basis for each Lender, upon at least 5 days (or such shorter period of time as the Administrative Agent may agree in its reasonable discretion) prior written notice to the Administrative Agent delivered at any time, which notice shall specify the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of $1,000,000, or an increment of $100,000 in excess thereof.

Section 2.09 Evidence of Debt.

(a) 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 the Revolver Loans made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and

payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraph (a) or (b) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein 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 obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement and, provided further that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(d) Any Lender may request that the Revolver Loans made by it be evidenced by a promissory note (a "Note") in the form of Exhibit E. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and the Borrower. Thereafter, the Revolver Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one (1) or more promissory notes in such form.

Section 2.10 Application of Payment in the Dominion Account. During the Initial Cash Dominion Trigger Period, and thereafter upon delivery of a written notice to the Borrower from the Administrative Agent that specifies that "cash dominion" is being instituted, the ledger balance in the Dominion Account as of the end of each Business Day shall be applied to reduce the outstanding Secured Obligations at the beginning of the next Business Day during any Cash Dominion Trigger Period. Such funds shall be applied first to prepay any Protective Advances and Overadvance Loans that may be outstanding, pro rata, second to prepay the Revolver Loans, and third to cash collateralize outstanding LC Obligations. During a Cash Dominion Trigger Period, the Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds in the Dominion Account or any Deposit Account subject to a Control Agreement, and agrees that the Administrative Agent shall have the continuing, exclusive right to apply and reapply the same against the outstanding Secured Obligations, in accordance with the terms of this Agreement and the other Loan Documents.

Section 2.11 Prepayments of Revolver Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty subject to prior notice in accordance with paragraph (d) of this Section 2.11 and, if applicable, payment of any break funding expenses required under Section 2.16.

(b) To the extent that at any time the outstanding Aggregate Revolving Exposure exceeds the Line Cap, the Borrower shall on the next Business Day first repay outstanding Loans (and thereafter Cash Collateralize outstanding LC Obligations at 100% of the face value thereof, to the extent remaining) in an amount equal to such excess.

(c) In the event and on each occasion that the Consolidated Cash Balance of the Loan Parties and their Subsidiaries exceeds $20,000,000 (as reflected in any Consolidated Cash Balance Report) at any time that any Loans are outstanding, the Borrower shall within one (1) Business Day of the date the applicable Consolidated Cash Balance Report was delivered or required to be delivered to the Administrative Agent prepay outstanding Loans in an amount equal to the lesser of (A) the amount of such excess and (B) the amount necessary to repay all outstanding Loans.

(d) The Borrower shall notify the Administrative Agent by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment under Section 2.11(a) not later than 12:00 p.m., Local Time, (A) in the case of prepayment of a Eurodollar Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of a CBFR Borrowing, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolver Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice, 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. Each prepayment of a Borrowing shall be applied ratably to the Revolver Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments required pursuant to Section 2.16.

Section 2.12 Fees.

(a) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent set forth in the Fee Letter.

(b) 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 equal to the Unused Line Fee Rate multiplied by the amount by which the Revolver Commitments (other than Revolver Commitments of a Defaulting Lender) exceed the average daily balance of outstanding Revolver Loans and the Stated Amount of outstanding Letters of Credit during any fiscal quarter (such fee, the "Unused Line Fee"). Such fee shall be payable in arrears, on the first calendar day of each fiscal quarter.

(c) LC Facility Fees. The Borrower shall pay (a) to the Administrative Agent, for the Pro Rata benefit of the Lenders, a fee equal to (i) the Applicable Margin in effect for Eurodollar Loans times the average daily Stated Amount of outstanding "standby" Letters of Credit and (ii) 50% of such Applicable Margin times the average daily Stated Amount of outstanding "commercial" Letters of Credit, in each case, which fee shall be payable in arrears, on the first Business Day of each fiscal quarter; (b) to the applicable Issuing Bank, for its own account, a fronting fee not in excess of 0.125% per annum of the Stated Amount of each Letter of Credit issued by such Issuing Bank ("Issuing Bank Fee"), which fee shall be calculated based upon the actual number of days elapsed over a 360-day year and payable in arrears, on the first calendar day of each fiscal quarter (it being understood that any Issuing Bank Fee payable to Wells Fargo Bank, N.A., in its capacity as Issuing Bank, will be payable in arrears, on the first Business Day of each fiscal quarter); and (c) to the applicable Issuing Bank, for its own account, all customary charges associated with the issuance, registration, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred upon demand.

(d) Generally. All fees described in this Section 2.12 shall be paid on the dates due, in Dollars in immediately available funds. Once paid, none of such fees shall be refundable under any circumstances.

(e) Closing Fee. The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, as compensation for the making of such Revolver Commitment, a closing fee (the "Closing Fee") in an amount equal to 0.75% of the stated principal amount of such Lender's Revolver Commitment on the Closing Date. Such Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.

Section 2.13 Interest.

(a) The Revolver Loans comprising each CBFR Borrowing shall bear interest at the CBFR plus the Applicable Margin.

(b) The Revolver Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Each Protective Advance and each Overadvance Loan shall bear interest at the CBFR plus the Applicable Margin plus 2%.

(d) Notwithstanding the foregoing, if any principal of or interest on any Revolver 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 or any Event of Default exists, all overdue amounts 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 as provided in the preceding paragraphs

of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to CBFR Loans as provided in paragraph (a) of this Section (in each case, the "Default Rate").

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Revolver Termination Date; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Eurodollar Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of three hundred sixty (360) days, except that interest computed by reference to the CBFR at times when the CBFR is based on the Prime Rate shall be computed on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable CBFR, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14 Alternate Rate of Interest. (a) Subject to clauses (c), (d), (e), (f), (g) and (h) of this Section 2.14, if prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Revolver Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto a CBFR Borrowing, and (B) if the Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a CBFR Borrowing.

(b) [Reserved.]

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Local Time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(d) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the

then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (d) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(e) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(f) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (g) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(g) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or LIBO Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(h) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to CBFR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of CBFR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of CBFR.

Section 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank; or

(ii) subject any Lender Party to any Taxes (other than (A) Indemnified Taxes paid or payable under Section 2.17, (B) Other Taxes and (C) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or other Lender Party of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, Issuing Bank or other Lender Party of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Lender Party hereunder (whether of principal, interest or otherwise), then within thirty (30) days of receipt of a certificate of the type specified in paragraph (d) below the Borrower will pay to such Lender, Issuing Bank or other Lender Party, as applicable, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Lender Party, as applicable, for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital requirements 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 made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such or Issuing Bank or such Lender's or such 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 within thirty (30) days of receipt of a certificate of the type specified in paragraph (d) below the Borrower shall pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

(d) A certificate of a Lender or an Issuing Bank setting forth in reasonable detail the calculation of the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error; provided that such certificate from each such Lender or Issuing Bank shall contain a certification to the Borrower that such Lender or Issuing Bank is generally requiring reimbursement for the relevant amounts from similarly situated borrowers under comparable syndicated credit facilities. The Borrower shall pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(e) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank shall notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (excluding loss of margin). Such loss, cost and expense to any Lender shall be deemed to be the amount reasonably determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan but exclusive of the Applicable Margin relating thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for U.S. Dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

Section 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without deduction or withholding for any Taxes, except as required by Applicable Law; provided that if a Loan Party or other applicable withholding agent shall be required by Applicable Law (as determined in the good faith discretion of such Loan Party or other applicable withholding agent) to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by any Loan Party shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender or any Issuing Bank, as applicable, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or, at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(c) Each Loan Party shall indemnify the Administrative Agent, each Lender and each Issuing Bank, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or payable by the Administrative Agent, such Lender or such Issuing Bank, as applicable, on, or required to be withheld or deducted, with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability, prepared in good faith and delivered to such Loan Party by a Lender or an Issuing Bank or by the Administrative Agent on its own behalf, on behalf of another Agent or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative

Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or 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 Loan Document, IRS Form W-8BEN or 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) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one (1) or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender and in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (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 Section 2.17(f) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Loan Parties or any other Person.

(g) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Loan Parties to do so) and (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register, in either case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (g).

(h) For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16, or 2.17, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative

Agent, except payments to be made directly to the applicable Issuing Bank as expressly provided herein. 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. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due from the Borrower hereunder, such funds (except as otherwise provided in the Collateral Agreement with respect to the application of amounts realized from the Collateral) shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If (other than (x) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans to any assignee or participant, including any assignee or participation that is a Loan Party or any of its Affiliates or (y) as otherwise expressly provided elsewhere herein, including, without limitation, as provided in or contemplated by Section 9.04(f)) 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 Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its 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 Loans and participations in LC Disbursements 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 Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (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. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(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 the 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 applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.05(b), 2.06(b) or 2.18(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.

(f) Each borrowing by the Borrower from the Lenders hereunder shall be made pro rata according to the respective Revolving Facility Percentages of the relevant Lenders.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender is a Defaulting Lender or becomes an Affected Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) terminate the Revolver Commitments of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (ii) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments, (iv) the Borrower shall be liable to such Lender under Section 2.16 if any Eurodollar Loan owing to such Lender is repaid or purchased other than on the last day of the Interest Period relating thereto, (v) such assignment shall otherwise comply with Section 9.04 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (vi) until such time as such Revolver Commitments are terminated, obligations are repaid or such assignment is consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.15 or Section 2.17, as the case may be. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrower, the Administrative Agent or any Lender may have against any replaced Lender. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.19(b).

(c) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.08 requires the consent of all of the Lenders or all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to replace such Non-Consenting Lender by (i) terminating the Revolver Commitments of such Lender and repaying all obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (ii) requiring such Non-Consenting Lender to assign (in accordance with and subject to the restrictions contained in Section 9.04) all or the affected portion of its Loans and its Revolver Commitments hereunder to one (1) or more assignees, provided that: (a) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon, (c) the Borrower shall be liable to such Lender under Section 2.16 if any Eurodollar Loan owing to such Lender is repaid or purchased other than on the last day of the Interest Period relating thereto, (d) such assignment shall otherwise comply with Section 9.04 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (e) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of

such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.19(c).

Section 2.20 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurodollar Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (at which time such Lender shall be deemed an "Affected Lender"), any obligations of such Affected Lender to make or continue Eurodollar Loans or to convert CBFR Borrowings to Eurodollar Borrowings shall be suspended until such Affected 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 Affected Lender (with a copy to the Administrative Agent), either convert all Eurodollar Borrowings of such Affected Lender to CBFR Borrowings, either on the last day of the Interest Period therefor, if such Affected Lender may lawfully continue to maintain such Eurodollar Borrowings to such day, or immediately, if such Affected Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.21 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 Revolver Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares and any Revolver Commitments or Fronting Exposure of any such Defaulting Lender shall automatically be reallocated among the non-Defaulting Lenders Pro Rata in accordance with their Revolver Commitments up to an amount such that the Revolver Commitment of each non-Defaulting Lender does not exceed its Revolver Commitments, so long as the conditions set forth in Section 4.02 are satisfied at the time of such reallocation. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in Section 9.08.

(b) Payments; Fees. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.06), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a Pro Rata basis of any amounts owing by that Defaulting Lender to any applicable Issuing Banks hereunder; *third*, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable Issuing Bank, to be held as Cash Collateral at a rate of 100% of the Fronting Exposure of such Defaulting Lender; *fourth*, to the funding of any Revolver Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent or the Borrower, to be held in a deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Revolver Loans under this Agreement and to Cash Collateralize any Issuing Bank's Fronting Exposure with respect to such Defaulting Lender; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Revolver Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Revolver Loans or LC Obligations were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolver Loans of, and LC Obligations owed to, all non-Defaulting Lenders on a Pro Rata basis prior to being applied to the payment of any Revolver Loans of, or LC Obligations owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.21(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto. 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 Revolver Commitment shall be disregarded for purposes of calculating the Unused Line Fee Rate under Section 2.12(b). To the extent any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, Letter of Credit fees attributable to such LC Obligations under Section 2.12(c) shall be paid to such other Lenders. The Administrative Agent shall be paid all Letter of Credit fees attributable to LC Obligations that are not so reallocated.

(c) Cure. The Borrower, the Administrative Agent and the Issuing Banks 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 Revolver Commitments and Revolver Loans, and all outstanding Revolver Loans, LC Obligations and other exposures under the Revolver Commitments shall be reallocated among the 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 in writing by the Borrower, the Administrative Agent and the Issuing Banks (each of which shall make such determination, in its sole discretion), 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 Revolver 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. No reallocation hereunder shall constitute a wavier or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

Section 2.22 Revolver 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 Revolver Commitments (a "Revolver Commitment Increase") in an aggregate amount not to exceed $40,000,000; provided that (a) the Borrower shall only be permitted to request four (4) Revolver Commitment Increases during the term of this Agreement, (b) any Revolver Commitment Increase shall be in a minimum amount of $10,000,000, and (c) after giving effect to all such Revolver Commitment Increases, the aggregate amount of the Revolver Commitments outstanding shall not exceed $150,000,000.

(b) Each notice submitted pursuant to this Section 2.22 (a "Revolver Commitment Increase Notice") requesting a Revolver Commitment Increase shall specify the amount of the increase in the Revolver Commitments being requested. Upon receipt of a Revolver Commitment Increase Notice, the Administrative Agent may (at the direction of the Borrower) promptly notify the Lenders and each Lender shall (subject to the Borrower's consent) have the right to elect to have its Revolver Commitment increased by its Pro Rata share (it being understood and agreed that a Lender may elect to have its Revolver Commitment increased in excess of its Pro Rata share in its discretion if any other Lender declines to participate in the Revolver Commitment Increase) of the requested increase in Revolver Commitments; provided that (i) each Lender may elect or decline, in its sole discretion, to have its Revolver Commitment increased in connection with any requested Revolver Commitment Increase, it being understood that no Lender shall be obligated to increase its Revolver Commitment or make any Revolver Loan under any Revolver Commitment Increase unless it, in its sole discretion, so agrees and, if a Lender fails to respond to any Revolver Commitment Increase Notice within five (5) Business Days after such Lender's receipt of such request, such Lender shall be deemed to have declined to participate in such Revolver Commitment Increase, (ii) if any Lender declines to participate in any Revolver Commitment Increase and, as a result, commitments from additional financial institutions are required in connection with the Revolver Commitment Increase, any Person or Persons providing such commitment shall, if not a Lender, an Affiliate of a Lender or a Related Fund, (x) qualify as an "Eligible Assignee" under clause (ii) of the definition thereof and (y) be subject to the written consent of the Administrative Agent and the Issuing Banks (such consent not to be unreasonably withheld or delayed), and (iii) in no event shall a Defaulting Lender be entitled to participate in such Revolver Commitment Increase. In the event that any Lender or other Person agrees to participate in any Revolver Commitment Increase (each an "Increase Loan Lender"), such Revolver 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 Revolver Commitment Increase Notice (such date, the "Increase Date"); provided that the establishment of such Revolver Commitment Increase and the obligation of such Increase Loan Lenders to make the Revolver Loans thereunder shall be subject to the satisfaction of each of the following conditions: (1) no Event of Default would exist after giving effect thereto; (2) the Revolver 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; (3) the Loan Parties shall execute and deliver or cause to be executed and delivered to the Administrative Agent such amendments to the Loan 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; (4) any Increase Loan Lender, if it shall not be a Lender prior to such Revolver Commitment Increase, shall have delivered to the Administrative Agent an Administrative Questionnaire and all applicable tax forms; and (5) the Borrower shall have paid to the Administrative Agent and the Lenders such additional fees as may be required to be paid by the Borrower in connection therewith.

(c) On the Increase Date, upon fulfillment of the conditions set forth in this Section 2.22, (i) the Administrative Agent shall effect a settlement of all outstanding Revolver Loans among the Lenders that will reflect the adjustments to the Revolver Commitments of the Lenders as a result of the Revolver Commitment Increase, (ii) the Administrative Agent shall notify the Lenders and Loan Parties of the occurrence of the Revolver Commitment Increase to be effected on the Increase Date, (iii) Schedule 2.01 shall be deemed modified to reflect the revised Revolver Commitments of the affected Lenders and (iv) Notes will be issued, at the expense of the Borrower, to any Lender participating in the Revolver Commitment Increase and requesting a Note.

(d) The terms and provisions of the Revolver Commitment Increase shall be identical to the Revolver Loans and the Revolver Commitments (other than with respect to fees) and, for purposes of this Agreement and the other Loan Documents, all Revolver Loans made under the Revolver Commitment Increase shall be deemed to be Revolver Loans. Without limiting the generality of the foregoing, (i) the rate of interest applicable to the Revolver Commitment Increase shall be the same as the rate of interest applicable to the existing Revolver Loans, (ii) unused line fees applicable to the Revolver Commitment Increase shall be calculated using the same Unused Line Fee Rates applicable to the existing Revolver Loans, (iii) the Revolver Commitment Increase shall share ratably in any mandatory prepayments of the Revolver Loans, (iv) after giving effect to such Revolver Commitment Increases and prior to the Commitment Revolver Termination Date, Revolver Commitments shall be reduced on a Pro Rata basis, and (v) the Revolver Commitment Increase shall rank *pari passu* in right of payment and security with the existing Revolver Loans. Notwithstanding the foregoing or anything to the contrary contained in the Loan Documents (including Section 9.08), the rate of interest and the Unused Line Fee Rate or similar fee or interest rate applicable to the existing Revolver Loans may, at the sole option of the Borrower, be increased in excess of the rate of interest and/or fee applicable thereto to match that applicable to the Revolver Commitment Increase. Each joinder agreement and any amendment to any Loan Document requested by the Administrative Agent in connection with the establishment of the Revolver Commitment Increase may, without the consent of any of the Lenders, effect such amendments to this Agreement and the other Loan 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 2.22.

Section 2.23 Bank Products and Swap Agreements. Each Lender or Affiliate thereof providing Bank Products for, or having Swap Agreements with, any Loan Party or any Subsidiary of a Loan Party shall deliver to the Administrative Agent, promptly after entering into such Bank Products or Swap Agreements, written notice setting forth the aggregate amount of all Bank Product Obligations and Swap Agreement Obligations of such Loan Party or Subsidiary thereof to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof shall deliver to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Bank Product Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining the amounts to be applied in respect of such Bank Product Obligations and/or Swap Agreement Obligations pursuant to Section 7.02 and which tier of the waterfall, contained in Section 7.02, such Bank Product Obligations and/or Swap Agreement Obligations will be placed. For the avoidance of doubt, so long as J.P. Morgan or its Affiliate is the Administrative Agent, neither J.P. Morgan nor any of its Affiliates providing Bank Products for, or having Swap Agreements with, any Loan Party or any Subsidiary of a Loan Party shall be required to provide any notice described in this Section 2.23 in respect of such Bank Products or Swap Agreements.

Section 2.24 Overadvances. If the Aggregate Revolving Exposure (excluding in respect of Protective Advances) exceeds the Line Cap (an "Overadvance") at any time, the excess amount shall constitute a Loan (an "Overadvance Loan") and shall be payable by the Borrower on demand by the Administrative Agent, but all such Overadvance Loans shall nevertheless constitute Secured Obligations secured by the Collateral and entitled to all benefits of the Loan 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 from the Lenders), and (ii) the aggregate amount of all Overadvances and Protective Advances does not exceed 5% of the Borrowing Base and (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 Loans and LC Obligations

to exceed the aggregate Revolver Commitments. The making of any Overadvance Loan 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 Loan Party be permitted to require any Overadvance Loan to be made.

Section 2.25 Protective Advances. The Administrative Agent shall be authorized, in its discretion, following notice to and consultation with the Borrower, at any time, to make CBFR Loans ("Protective Advances") (a) in an aggregate amount, together with the aggregate amount of all Overadvance Loans, not to exceed the greater of (i) 5% of the Borrowing Base and (ii) $5.0 million, 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 Loan Parties under any Loan Documents, including costs, fees and expenses; provided that, the aggregate amount of outstanding Protective Advances plus the outstanding amount of Revolver Loans, Overadvance Loans and LC Obligations shall not exceed the aggregate Revolver Commitments. Each Lender shall participate in each Protective Advance on a Pro Rata basis. 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.

ARTICLE III

Representations and Warranties

Each of Holdings (solely to the extent applicable to it) and each other Loan Party represents and warrants to the Administrative Agent, each of the Lenders and each of the Issuing Banks that:

Section 3.01 Organization; Powers. Each of Holdings, the Borrower and each of the Subsidiaries (a) is a limited partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business and in good standing in each jurisdiction where such qualification is required; except in each case referred to in this Section 3.01 (other than in clause (a) and clause (b), respectively, with respect to the Borrower), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization. The execution, delivery and performance by Holdings, the Borrower and each of the Subsidiary Guarantors of each of the Loan Documents to which it is a party, and the borrowings hereunder, the consummation of the Plan of Reorganization, the transactions forming a part of the Transactions and the payment of the Transaction Costs (a) have been duly authorized by all corporate, stockholder, limited partnership or limited liability company action required to be obtained by Holdings, the Borrower and such Subsidiary Guarantors and (b) will not (i) violate (A) any provision of (x) law, statute, rule or regulation applicable to such party, or (y) of the certificate or articles of incorporation or other constitutive documents or by-laws of Holdings, the Borrower or any such Subsidiary Guarantor, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which Holdings, the Borrower or any such Subsidiary Guarantor is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation,

breach or default referred to in clause (b)(i)(A)(x), (b)(i)(B), (b)(i)(C) or (b)(ii) of this Section 3.02, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Holdings, the Borrower or any such Subsidiary Guarantor, other than the Liens created by the Loan Documents and Liens permitted by Section 6.02 hereof.

Section 3.03 Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

Section 3.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the consummation of the Plan of Reorganization, the Transactions and the payment of the Transaction Costs, except for (a) the filing of Uniform Commercial Code financing statements, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) such as have been made or obtained and are in full force and effect, (d) such actions, consents, approvals, registrations or filings the failure to be obtained or made which could not reasonably be expected to have a Material Adverse Effect and (e) the recordation of Mortgages.

Section 3.05 Financial Statements.

(a) All financial statements of the Borrower and its Subsidiaries that have been or may hereafter be delivered by any Loan Party to the Administrative Agent and/or the Lenders present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of the Borrower and its Subsidiaries as of the date(s) and for the period(s) thereof in accordance with GAAP.

(b) No Loan Party or any Subsidiary has as of the Closing Date any material indebtedness or any material contingent liabilities, off-balance sheet liabilities or liabilities for Taxes, except as referred to or reflected in the financial statements of the Loan Parties or their Subsidiaries previously delivered to the Lenders.

Section 3.06 No Material Adverse Effect. Since the Petition Date, no event, development, circumstance or change has occurred that has or would reasonably be expected to have a Material Adverse Effect.

Section 3.07 Title to Properties; Possession Under Leases.

(a) Each of Holdings, the Borrower and the Subsidiaries has good and insurable fee simple title to the Mortgaged Properties, if any, and good and insurable fee simple title to, or good and valid interests in easements or other limited property interests in, as applicable, all its other real properties and has good and valid title to its personal property and assets, in each case, free and clear of Liens except for defects in title that do not impair the value thereof in any material respect or interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and Liens expressly permitted by Section 6.02, and except where the failure to have such title or interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Each of Holdings, the Borrower and the Subsidiaries owns or possesses, or is licensed or otherwise has the right to use, all patents, trademarks, service marks, trade names and copyrights and all licenses and rights with respect to the foregoing, reasonably necessary for the present conduct of its business, without any conflict (of which the Borrower has been notified in writing) with the rights of others, except where the failure to have such rights or where such conflicts and restrictions could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, to the knowledge of the Loan Parties or any Subsidiary, the use of such trademarks, copyrights, patents, licenses and other intellectual property by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement except as set forth on Schedule 3.07(b).

(c) As of the date of the Closing Date, Schedule 3.07(c) sets forth the address of each parcel of real property that is owned by any Loan Party and each material parcel of real property that is leased by any Loan Party (collectively, the "Real Property"). As of the Closing Date, to the knowledge of the Loan Parties and following the assumption of such leases pursuant to the Plan of Reorganization, (i) each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, (ii) no Loan Party is in default under its material monetary obligations with respect to each of its leases and subleases, and (iii) there are no other material defaults with respect to any of such leases or subleases, subject to any applicable cure periods.

Section 3.08 Subsidiaries.

(a) Schedule 3.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each Subsidiary of Holdings and, as to each such Subsidiary, the percentage of each class of outstanding Equity Interests owned by Holdings or by any such Subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than directors' qualifying shares) of any nature relating to any Equity Interests of any Subsidiary.

Section 3.09 Litigation; Compliance with Laws.

(a) There are no actions, suits, investigations or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending against, or to the knowledge of Holdings or the Borrower threatened in writing against, Holdings or the Borrower or any of the Subsidiaries or any business, property or rights of any such Person (i) that involve any Loan Document, the Transactions or the payment of the Transaction Costs or (ii) that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Holdings, the Borrower, the Subsidiaries or their respective properties or assets is in violation of any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws that are the subject of Section 3.16) or any restriction of record or agreement affecting any owned real property, including the Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.10 Investment Company Act. None of Holdings, the Borrower or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.11 Use of Proceeds. The proceeds of the Revolver Loans have been used and will be used, whether directly or indirectly, as set forth in Section 5.13.

Section 3.12 Federal Reserve Regulations.

(a) None of Holdings, the Borrower or any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

Section 3.13 Tax Returns.

(a) Each of Holdings, the Borrower and its Subsidiaries has filed or caused to be filed all U.S. federal, state, local and non-U.S. Tax returns required to have been filed by it that are material to such companies, taken as a whole, and each such Tax return is true and correct in all material respects;

(b) Each of Holdings, the Borrower and its Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other material Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all such amounts due) (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which Holdings, the Borrower or any of its Subsidiaries (as the case may be) has set aside on its books adequate reserves (in accordance with GAAP), which Taxes, if not paid or adequately provided for, could, individually or in the aggregate, reasonably be expected to have, a Material Adverse Effect); and

(c) With respect to each of Holdings, the Borrower and its Subsidiaries, no tax lien has been filed, and, to the knowledge of the Borrower and its Subsidiaries, no claim is being asserted, with respect to any such Taxes, in each case in an amount in excess of $2,000,000 in the aggregate for all such tax liens and claims.

Section 3.14 Disclosure.

(a) The Loan Parties have disclosed to the Lenders all Material Agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Perfection Certificate nor any of the other reports, financial statements, certificates or other information (other than information of a general economic or industry specific nature) furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Closing Date, as of the Closing Date.

(b) As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement, if any, is true and correct in all material respects.

Section 3.15 Employee Benefit Plans.

(a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Loan Party and each ERISA Affiliate is in compliance with the applicable provisions of ERISA and the provisions of the Code relating to Plans and the regulations and published interpretations thereunder; and (ii) no ERISA Event has occurred or is reasonably expected to occur; the present value of all accumulated benefit obligations under each Plan (based on those assumptions used for purposes of Accounting Standards Codification No. 715: Compensation Retirement Benefits) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan allocable to such accrued benefits and the present value of all accrued benefit obligations of all underfunded Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed the value of the assets of all such underfunded Plans.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Foreign Plan Event has occurred.

Section 3.16 Environmental Matters. Except as to matters that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice of violation, request for information, order, complaint or assertion of penalty has been received by the Borrower or any of the Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened which allege a violation of or liability under any Environmental Laws or concerning Hazardous Materials, in each case relating to the Borrower or any of the Subsidiaries, (ii) the Borrower and the Subsidiaries has all permits necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits and with all other applicable Environmental

Laws, (iii) no Hazardous Material is located at any property currently or formerly owned, operated or leased by the Borrower or any of the Subsidiaries in quantities or concentrations that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated by or on behalf of the Borrower or any of the Subsidiaries that has been transported to or Released at or from any location in a manner that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries, and (iv) there is no agreement to which the Borrower or any of the Subsidiaries is a party in which the Borrower or any of the Subsidiaries has assumed or undertaken, or retained, responsibility for any known or reasonably likely liability or obligation arising under or relating to Environmental Laws.

Section 3.17 Security Documents.

(a) The Collateral Agreement is effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of Deposit Accounts, when Control Agreements are entered into by the Administrative Agent, and in the case of the other Collateral described in the Collateral Agreement, when financing statements and other filings described on Schedule 3.17 are filed in the offices specified on Schedule 3.17, the Administrative Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Obligations, in each case to the extent security interests in such Collateral can be perfected by the execution of Control Agreements or the filing Uniform Commercial Code financing statements, as applicable, in each case prior and superior in right to any other Person (except, Liens expressly permitted by Section 6.02).

(b) The Mortgages, if any, shall be effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) a legal, valid and enforceable Lien on all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgages are filed or recorded in the proper real estate filing or recording offices, the Administrative Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to any other Person, other than with respect to the rights of a Person pursuant to Liens expressly permitted by Section 6.02.

Section 3.18 Solvency. Immediately after giving effect to the consummation of the Plan of Reorganization (including the making of all distributions and payments required thereunder), the Transactions and the payment of the Transaction Costs on the Closing Date and immediately following the making of the Revolver Loans on the Closing Date and on the date of each Borrowing and after giving effect to the application of the proceeds of the Revolver Loans, (i) the fair value of the assets of Holdings, the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Holdings, the Borrower and its Subsidiaries on a consolidated basis, respectively; (ii) the present fair saleable value of the property of Holdings, the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of Holdings, the Borrower and its Subsidiaries on a consolidated basis, respectively, on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) Holdings, the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) Holdings, the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

Section 3.19 Labor Matters. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other Applicable Law dealing with such matters; (c) all Persons treated as contractors by the Borrower and the Subsidiaries are properly categorized as such, and not as employees, under Applicable Law; and (d) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect the consummation of the Transactions and the payment of the Transaction Costs will not give rise to a right of termination or right of renegotiation on the part of any union under any

material collective bargaining agreement to which the Borrower or any of its Subsidiaries (or any predecessor) is a party or by which Holdings, the Borrower or any of its Subsidiaries (or any predecessor) is bound.

Section 3.20 Insurance. Schedule 3.20 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of Holdings, the Borrower or the Subsidiaries as of the Closing Date. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

Section 3.21 USA PATRIOT Act and OFAC.

(a) To the extent applicable, each Loan Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) USA PATRIOT Act. To the knowledge of the Borrower, no part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions, and the Loan Parties, their Subsidiaries and their respective officers and employees.

(c) To the knowledge of the Loan Parties, each of their directors and agents are in compliance with Anti-Corruption Laws and Sanctions in all material respects.

(d) None of (i) Holdings, the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (ii) to the knowledge of the Borrower, any agent of Holdings, 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.

(e) No Borrowing or Letter of Credit, use of proceeds by the Borrower or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

Section 3.22 EEA Financial Institution. No Loan Party is an EEA Financial Institution.

Section 3.23 Plan Assets. None of the Borrower or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

Section 3.24 Common Enterprise. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

Section 3.25 Material Agreements. All Material Agreements to which any Loan Party or any Subsidiary is a party or is bound as of the date of this Agreement are listed on Schedule 3.25. No Loan Party nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any Material Agreement to which it is a party or (ii) any agreement or instrument evidencing or governing any Material Indebtedness, in each case, except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

ARTICLE IV

Conditions Precedent

Section 4.01 Closing Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions are satisfied or waived:

(a) The representations and warranties set forth in **Article III** hereof shall be true and correct in all material respects (without duplication of any materiality qualification applicable thereto) as of such date, 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 (without duplication of any materiality qualification applicable thereto) as of such earlier date).

(b) At the time of and immediately after giving effect to the Closing Date, no Event of Default or Default shall have occurred and be continuing or would result from any Borrowing to occur on the date hereof or the application of the proceeds thereof.

(c) The Administrative Agent (or its counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.13(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) and (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document.

(d) The Administrative Agent shall have received, on behalf of itself and the Lenders on the Closing Date, a written opinion from Haynes and Boone, LLP, special counsel for Holdings and the Borrower (A) dated the Closing Date, (B) addressed to the Administrative Agent and the Lenders on the Closing Date and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such other matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request, and each of Holdings and the Borrower hereby instructs its counsel to deliver such opinions.

(e) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii), (iii) and (iv) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official);

(ii) a certificate of the secretary or assistant secretary or similar officer of each Loan Party dated the Closing Date and certifying:

(A) that attached thereto is a true and complete copy of the by-laws (or limited partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party,

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above; and

(iv) a certificate of a Responsible Officer of the Borrower certifying that as of the Closing Date the conditions precedent contained in clauses (a), (b), and (l) of this Section 4.01 are satisfied.

(f) The Administrative Agent shall have received each Control Agreement required to be provided pursuant to Section 5.12(d).

(g) (i) the Administrative Agent shall have received a duly completed Perfection Certificate dated as of the Closing Date, together with all attachments contemplated thereby, (ii) the Administrative Agent shall have received the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties and copies of the financing statements (or similar documents) disclosed by such search and (iii) the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are either permitted by Section 6.02 or have been released (or authorized for release in a manner reasonably satisfactory to the Administrative Agent).

(h) Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02 to be prior to the Liens of the Administrative Agent in the applicable Collateral (including Liens on Term Loan Priority Collateral securing the Term Loan Obligations permitted under Section 6.02(b)(iii)), shall have been filed, registered or recorded or immediately upon the closing of this Agreement will be filed, registered or recorded by Administrative Agent.

(i) On the Closing Date, substantially concurrently with the funding of the Loans, Holdings and its Subsidiaries shall have paid in full the Existing Debt and caused the termination of any commitments to lend or make other extensions of credit under the Prepetition Credit Agreement, the DIP ABL Credit Agreement and the DIP RE Credit Agreement.

(j) The Lenders shall have received a solvency certificate substantially in the form of Exhibit B and signed by a Responsible Officer of the Parent.

(k) The Administrative Agent shall have received all fees payable thereto or to any Lender on or prior to the Closing Date and, to the extent invoiced at least 3 Business Days prior to the Closing Date, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented (in summary format) out-of-pocket expenses (including reasonable and documented (in summary format) fees, charges and disbursements of Vinson & Elkins LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(l) Since the Petition Date, there shall not have occurred and there is no circumstance or occurrence that is reasonably likely to have (individually or in the aggregate) a Material Adverse Effect, excluding the pendency of the Cases.

(m) The Administrative Agent shall have received, at least five (5) days prior to the Closing Date, (i) all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Closing Date, any Lender that has requested, in a written notice to the Borrower, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(n) The Administrative Agent shall have received satisfactory evidence that after giving effect to all Borrowings to be made on the Closing Date, the issuance of any Letters of Credit on the Closing Date (including the Existing Letters of Credit), all payments to be made to unsecured creditors and other claimants on the effective date of the Plan of Reorganization and the payment of all fees and expenses due hereunder, Availability (which for the avoidance of doubt will be calculated after giving effect to the Availability Block) shall not be less than $25,000,000.

(o) The terms of (i) the Plan of Reorganization and (ii) all orders of the Bankruptcy Court approving the Plan of Reorganization, the credit facility provided under this Agreement, and the Fee Letter, or affecting the rights, remedies and obligations of the Administrative Agent and the Lenders hereunder and thereunder, shall be in form and substance acceptable to the Lenders in all material respects.

(p) The Confirmation Order shall have been entered upon proper notice to all parties to be bound by the Plan of Reorganization, all as may be required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, order of the Bankruptcy Court, and any applicable local bankruptcy rules. Moreover, (i) unless otherwise waived by the Lenders, no appeal or petition for review, rehearing or certiorari with respect to the Confirmation Order may be pending and (ii) the Confirmation Order must otherwise be in full force and effect. The effective date of the Plan of Reorganization shall have occurred on or prior to the Closing Date.

(q) The Bankruptcy Court shall have entered an order, in form and substance acceptable to the Administrative Agent, approving the Fee Letter.

(r) The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.02 hereof.

(s) The Administrative Agent shall have received a Borrowing Base Certificate prepared as of the last day of November 2020 at least 5 Business Days prior to the Closing Date, which shall be in form reasonably satisfactory to the Administrative Agent.

(t) All legal (including tax) and regulatory matters shall be satisfactory to the Administrative Agent and the Lenders, including compliance with all applicable requirements of Regulation T, Regulation U and Regulation X of the Board, and the Administrative Agent's counsel shall have completed all legal due diligence.

(u) The corporate structure, capital structure and other debt instruments, material accounts and governing documents of the Loan Parties shall be acceptable to the Administrative Agent in its sole discretion.

(v) The Administrative Agent shall have received evidence that all consents and approvals, if any, required to be obtained from any Governmental Authority or other Person in connection with the Transactions (including member and shareholder approvals) have been obtained and are in full force and effect.

(w) The Administrative Agent shall have received executed copies of the Term Loan Agreement and all material Term Loan Documents, each of which shall be in form and substance satisfactory to the Administrative Agent in all respects.

(x) The Administrative Agent shall have received a copy of the Intercreditor Agreement executed by the Term Loan Agent and the Loan Parties and which shall be in form and substance satisfactory to the Administrative Agent and the Lenders in all respects.

Each Agent and each Lender, by delivering its signature page to this Agreement shall be deemed to have acknowledged receipt of and consented to and approved each Loan Document and each other document required to be approved by any Agent or Lender, as applicable, on the Closing Date.

Section 4.02 Conditions Precedent to All Credit Extensions. On the date of each Credit Extension (including any Credit Extension to be made on the Closing Date):

(a) the Borrower shall have delivered to the Administrative Agent a customary Borrowing Request, or LC Request as the case may be;

(b) after giving effect to the requested Credit Extension, Availability shall not be less than $0;

(c) no Default or Event of Default shall exist at the time of, or result from, such Credit Extension;

(d) the representations and warranties of each Loan Party set forth in Article III of this Agreement or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on the date of, and upon giving effect to, such Credit Extension (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as such earlier date);

(e) with respect to the issuance of any Letter of Credit, the LC Conditions shall be satisfied; and

(f) after giving effect to the requested Credit Extension (net of any substantially concurrent use of the proceeds of such Credit Extension or, with respect to the funding of payroll expenses in the ordinary course of business, within 7 days of such Credit Extension), the Consolidated Cash Balance shall not exceed $20,000,000.

Each request by the Borrower for a Credit Extension shall constitute a representation by the Borrower that the conditions in clauses (b) through (f) above are satisfied on the date of such request and on the date of such Credit Extension.

ARTICLE V

Affirmative Covenants

Each of Holdings (solely as to Sections 5.01, 5.05 and 5.09 as applicable to it) and the Borrower covenants and agrees with the Administrative Agent, each Lender and each Issuing Bank that until all of the Secured Obligations have been Paid in Full, unless the Required Lenders shall otherwise consent in writing, the Borrower (and Holdings solely to the extent applicable to it) will, and the Borrower will cause each of the Subsidiaries to:

Section 5.01 Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except (i) where the failure to do so would not reasonably be expected to have a Material Adverse Effect and (ii) as otherwise expressly permitted under Section 6.05.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and (ii) at all times maintain and preserve all property reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and keep such property in satisfactory repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto in accordance with prudent industry practice (in each case except as expressly permitted by this Agreement).

Section 5.02 Insurance.

(a) Maintain, with financially sound and reputable insurance companies having a financial strength rating of at least "A-" from A.M. Best & Co., insurance in such amounts and against such risks and such other hazards as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. Each such policy of insurance shall (i) name the Administrative Agent, on behalf of Secured Parties as an additional insured thereunder as its interests may appear, to the extent customary for such type of insurance and (ii) in the case of each casualty insurance policy and marine cargo insurance policy, contain a lender's loss payable clause and endorsement or such other customary endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Administrative Agent, on behalf of Lenders as the loss payee and mortgagee, if applicable, thereunder and to the extent available provides for at least thirty (30) days' prior written notice to the Administrative Agent of any cancellation of such policy.

(b) If any improved real property is included in the Collateral and the area in which the Premises (as defined in the Mortgages) are located is designated a special "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain and maintain with financially sound and reputable insurance companies such flood insurance in such reasonable amount as the Administrative Agent and the Lenders may from time to time reasonably require and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and promptly upon request of the Administrative Agent or any Lender, deliver to the Administrative Agent or such Lender, as applicable, evidence of such compliance in form and substance reasonably satisfactory to the Administrative Agent or such Lender, as applicable, including evidence of annual renewals of such flood insurance.

Section 5.03 Taxes. Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, pay and discharge promptly when due all material Taxes, imposed upon it or upon its income or profits or in respect of its property, as well as all lawful claims which, if unpaid, might give rise to a Lien (other than a Lien permitted under Section 6.02) upon such properties or any part thereof except to the extent not overdue by more than thirty (30) days or, if more than thirty (30) days overdue (a) the validity or amount thereof shall be contested in good faith by appropriate proceedings, and the Borrower or the affected Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto and (b) in the case of a Tax or claim which has or may become a Lien on any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 5.04 Financial Statements, Reports, etc.

Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) within ninety (90) days after the end of each fiscal year (commencing with fiscal year 2021), a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of Holdings and its Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be accompanied by customary management's discussion and analysis and audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which opinion shall be without a "going concern" or like qualification, other than solely with respect to an upcoming maturity date of Indebtedness

or a potential inability to satisfy a financial covenant, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements fairly present, in all material respects, the financial condition and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP, supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial condition and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of annual reports on Form 10-K of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(a) to the extent such annual reports include the information specified herein);

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year (commencing with the first full fiscal quarter ending after the occurrence of the Spring-Out Date), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail and which consolidated balance sheet and related statements of operations and cash flows shall be accompanied by customary management's discussion and analysis and certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes), supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial position and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(b) to the extent such quarterly reports include the information specified herein);

(c) at all times prior to the end of the first full fiscal quarter ending after the occurrence of the Spring-Out Date and at any time thereafter if a Cash Dominion Trigger Period is in effect, within thirty (30) days after the end of each month (or after the Spring-Out Date, for each of the first two (2) months of each fiscal quarter), a balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such month and the consolidated results of its operations during such month, all of which shall be in reasonable detail and certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes);

(d) (i) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form attached hereto as Exhibit C (x) certifying that no Default or Event of Default has occurred or, if such a Default or an Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (y) setting forth the reasonably detailed calculations with respect to the Consolidated Fixed Charge Coverage Ratio for such period, whether or not the requirements of Section 6.10 are then in effect;

(e) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by Holdings, the Borrower or any of its Subsidiaries with the SEC or any securities exchange, or distributed to its stockholders generally, as applicable and all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries;

(f) together with each delivery under Section 5.04(a), a detailed consolidated and consolidated quarterly budget for such fiscal year (including a projected consolidated and consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated and consolidated statements of projected cash flow and projected income) and, as soon as available, significant revisions, if any, of such budget and quarterly projections with respect to such fiscal year (to the extent that such revisions have been approved by the Borrower's board of directors (or equivalent governing body)), including a description of underlying assumptions with respect thereto (collectively, the "Budget"), which Budget shall in each case be accompanied by the statement of a

Financial Officer of the Borrower to the effect that, to such Financial Officer's knowledge, the Budget is a reasonable estimate for the period covered thereby;

(g) promptly following a request therefor, all documentation and other information that the Administrative Agent reasonably requests on its behalf or on behalf of any Lender in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(h) together with the delivery of the annual compliance certificate required by Section 5.04(d), deliver an updated Perfection Certificate reflecting all changes since the date of the information most recently received pursuant to this paragraph (h) or Section 5.09(e);

(i) promptly following reasonable request therefore from the Administrative Agent, copies of (i) any documents described in Sections 101(f) and/or (j) of ERISA with respect to any Plan, and/or (ii) any notices or documents described in Sections 101(f), (k) and/or (l) of ERISA requested with respect to any Multiemployer Plan; provided, that if any Loan Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, then, upon reasonable request of the Administrative Agent, the Loan Party(ies) and/or the ERISA Affiliate(s) shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof;

(j) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any of its Subsidiaries, or compliance with the terms of any Loan Document, as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender);

(k) promptly, but in any event within three (3) Business Days after the furnishing, receipt or execution thereof, copies of (i) any amendment, waiver, consent or other written modification of the Term Loan Agreement or any material amendment, waiver, consent or other written modification of any other Term Loan Document, (ii) any notice of default or any notice related to the exercise of remedies under the Term Loan Documents, and (iii) any other material notice, certificate or other information or document provided to, or received from, the Term Loan Agent or the Term Loan Secured Parties (in their capacities as such);

(l) promptly, but in any event within five (5) Business Days after the furnishing, receipt or execution thereof, copies of (i) any termination, material amendment or other material written modification of any Material Agreement or any Material Indebtedness (other than the Term Loan Obligations), and (ii) any notice of default or any notice related to the exercise of remedies with respect to any Material Indebtedness (other than the Term Loan Obligations); and

(m) documents required to be delivered pursuant to this Section 5.04 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower (or a representative thereof) posts such documents (or provides a link thereto) at www.tuesdaymorning.com; provided that, other than with respect to items required to be delivered pursuant to Section 5.04(e) above, Holdings or the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at www.tuesdaymorning.com and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; (ii) on which such documents are delivered by Holdings or the Borrower to the Administrative Agent for posting on behalf of Holdings and the Borrower on IntraLinks, SyndTrak or another relevant secure 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); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) with respect to any item required to be delivered pursuant to Section 5.04(e) above in respect of information filed by Holdings or its applicable Parent Entity with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q reports and Form 10-K reports), on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority.

Section 5.05 Notices of Material Events. Furnish to the Administrative Agent written notice of the following promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof:

(a) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Borrower or any of their Subsidiaries would reasonably be expected to have a Material Adverse Effect;

(c) the occurrence of any ERISA Event or Foreign Plan Event that, individually or together with all other ERISA Events or Foreign Plan Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(d) the filing of any Lien for unpaid taxes in excess of $1,000,000;

(e) any change in the Borrower's chief executive officer or chief financial officer;

(f) any discharge, resignation or withdrawal of the registered public accounting firm (provided that filing an applicable 8-K with the SEC shall satisfy any notice requirements under clause (e) above or this clause (f));

(g) any Casualty Event or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event, in each case involving assets with a fair market or book value in excess of $1,000,000;

(h) any change in the information provided in the Beneficial Ownership Certification, if any, delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(i) any other development specific to Holdings, the Borrower or any of their Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this Section 5.05 (i) shall be in writing and (ii) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and (if applicable) any action taken or proposed to be taken with respect thereto.

Section 5.06 Compliance with Laws. (a) Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; provided that this Section 5.06 shall not apply to Environmental Laws, which are the subject of Section 5.08, or to laws related to Taxes, which are the subject of Section 5.03 and (b) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.07 Maintaining Records; Access to Properties and Inspections.

(a) Maintain all financial records in a manner sufficient to permit the preparation of consolidated financial statements in accordance with GAAP.

(b) Permit the Administrative Agent, subject (except when an Event of Default exists) to reasonable advance notice to, and reasonable coordination with, the Borrower and 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 business, financial condition, assets and results of operations (it being understood that a representative of the Borrower is allowed to be present in any discussions with officers, employees, agent, advisors and independent accountants); provided that only one field examination and one inventory appraisal with respect to any Borrowing Base Collateral

per 12-month period will be at the Borrower's expense; provided further, that if at any time Availability is less than the greater of (i) $25.0 million and (ii) 25% of the Line Cap during such 12-month period, one additional field examination and one additional inventory appraisal of Borrowing Base Collateral may be performed in such 12-month period at the Borrower's expense, except that during the existence and continuance of a Specified Event of Default, there shall be no limit on the number of additional field examinations or inventory appraisals of Borrowing Base Collateral that shall be permitted at the Administrative Agent's request and at the Borrower's expense. The foregoing shall not limit the number of field examinations or inventory appraisals that can be performed by the Administrative Agent at its own expense. 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. 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) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses (other than legal fees or costs and expenses which are covered under Section 9.05) of the Administrative Agent in connection with (i) examinations of the Borrower's books and records or any other financial or Collateral matters as the Administrative Agent deems appropriate; and (ii) field examinations and inventory appraisals of Borrowing Base Collateral; in each case subject to the limitations on such examinations, audits and appraisals permitted under the preceding paragraph. 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. This Section shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

Section 5.08 Compliance with Environmental Laws.

(a) Comply, and make reasonable efforts to cause all lessees and other Persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws. This clause (a) shall be deemed not breached by a noncompliance with the foregoing if, upon learning of such noncompliance, the Borrower and any of its affected Subsidiaries promptly undertake reasonable efforts to eliminate such noncompliance, and such noncompliance and the elimination thereof, in the aggregate with any other noncompliance with any of the foregoing and the elimination thereof, could not reasonably be expected to have a Material Adverse Effect.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, generate, use, treat, store, release, dispose of, and otherwise manage Hazardous Materials in a manner that would not reasonably be expected to result in a material liability to the Borrower or any of the Subsidiaries or to materially affect any Real Property; and take reasonable efforts to prevent any other Person from generating, using, treating, storing, releasing, disposing of, or otherwise managing Hazardous Materials in a manner that could reasonably be expected to result in a material liability to, or materially affect any Real Property.

Section 5.09 Further Assurances; Additional Guarantors; Mortgages.

(a) Without limiting anything contained in this Section 5.09, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, financing statements, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any Applicable Law, or that the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure the perfection and priority of the Liens created or intended to be created by the Security Documents, all at the expense of the Loan Parties.

(b) If any asset (other than real property or improvements thereto or any interest therein) that has an individual fair market value in an amount greater than $1.0 million (as reasonably estimated by the Borrower) is acquired by Holdings, the Borrower or any Subsidiary Guarantor after the Closing Date or owned by an entity at the time it becomes a Subsidiary Guarantor (including, without limitation, as the result of a Division) (in each case other than assets constituting Collateral under a Security Document that become subject to a perfected Lien in favor of the Administrative Agent under such Security Document upon acquisition thereof or any Excluded Asset), cause such asset to be subjected to a perfected Lien securing the Obligations and take, and cause the applicable Loan

Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties, subject to paragraph (f) below.

(c) Within sixty (60) days following the Administrative Agent's written request, grant and cause each of the Subsidiary Guarantors to grant to the Administrative Agent (or, if the Administrative Agent shall so direct, a collateral agent, sub-agent or similar agent) security interests and mortgages in the Mortgageable Real Property of the Borrower or any such Subsidiary Guarantors specified in such request pursuant to Mortgages reasonably satisfactory to the Administrative Agent and constituting valid and enforceable Liens subject to no other Liens except as are permitted by Section 6.02. With respect to each such Mortgage, the Borrower shall deliver (at its expense) to the Administrative Agent contemporaneously therewith all Real Property Documents requested by the Administrative Agent, other than those Real Property Documents which are to be obtained (at the Borrower's expense) by the Administrative Agent.

(d) If (i) any additional Subsidiary (other than an Excluded Subsidiary) is formed or acquired after the Closing Date (including, without limitation, as the result of a Division) or (ii) any Excluded Subsidiary ceases to be an Excluded Subsidiary pursuant to the definition thereof, concurrently with the formation or acquisition thereof or of such Subsidiary ceasing to be an Excluded Subsidiary, notify the Administrative Agent and the Lenders thereof and, within ten (10) Business Days after such date or such longer period as the Administrative Agent shall agree, cause such Subsidiary to become a Subsidiary Guarantor by delivering a supplement to the Collateral Agreement, in the form specified therein, duly executed on behalf of such Subsidiary. Upon execution and delivery thereof, each such Person (x) shall automatically become a Subsidiary Guarantor under the Loan Documents and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (y) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral. In connection therewith, the Administrative Agent shall have received all documentation and other information regarding such newly formed or acquired Subsidiary as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act.

(e) (i) Furnish to the Administrative Agent promptly (and in any event within five (5) Business Days or such later date as the Administrative Agent may agree in its sole discretion) written notice of any change in (A) any Loan Party's corporate or organization name, (B) any Loan Party's organizational form or (C) any Loan Party's organizational identification number; provided that neither Holdings nor the Borrower shall effect or permit any such change unless all filings have been made, or will have been made within any applicable statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of the Secured Parties and (ii) promptly notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

(f) To the extent any improved real property is to be included in the Collateral, each Loan Party will, and will cause each Subsidiary to, execute and/or deliver, as applicable, such other documents as the Administrative Agent may reasonably request on behalf of any Lender that is a regulated financial institution or any Affiliate of such a Lender (each, a "Regulated Lender Entity"), in each case, to the extent such other documents are required for compliance by such Regulated Lender Entity with Applicable Law with respect to flood insurance diligence, documentation and coverage under all applicable Flood Insurance Laws. Prior to signing by the Loan Parties of any mortgage or deed of trust to secure the Secured Obligations, the applicable Loan Parties and the Administrative Agent shall have provided each Regulated Lender Entity requesting the same a copy of the life of loan flood zone determination relative to the property to be subject to such mortgage or deed of trust delivered to the Administrative Agent and copies of the other documents required by any such Regulated Lender Entity as provided in the preceding sentence and the Administrative Agent shall have received confirmation from each Regulated Lender Entity that flood insurance due diligence and flood insurance compliance has been satisfactorily completed by such Regulated Lender Entity (such confirmation not to be unreasonably withheld, conditioned or delayed, and shall be delivered promptly upon such completion by the applicable Regulated Lender Entity).

(g) At any time that any improved real property constitutes Collateral, no modification of a Loan Document shall increase any Regulated Lender Entity's Revolver Commitment or extend the Revolver Termination Date as to any Regulated Lender Entity hereunder until the Administrative Agent shall have received confirmation from each such Regulated Lender Entity that flood insurance due diligence and flood insurance compliance has been satisfactorily completed by such Regulated Lender Entity (such confirmation not to be unreasonably withheld, conditioned or delayed, and shall be delivered promptly upon such completion by the applicable Regulated Lender Entity).

(h) The provisions of this Section 5.09 with respect to the granting and perfection of security interests need not be satisfied with respect to (i) leasehold real property, (ii) Equity Interests of any Joint Ventures which cannot be pledged without the consent of one (1) or more third parties that is not an Affiliate of a Loan Party, (iii) Margin Stock, (iv) security interests to the extent the same would result in adverse tax consequences as reasonably determined by the Borrower and agreed to by the Administrative Agent, (v) any property and assets the pledge of which would require governmental consent, approval, license or authorization (in each case, after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other Applicable Law), (vi) the General Unsecured Cash Fund so long as it is maintained in accordance with the Plan of Reorganization, and (vii) all foreign intellectual property and any "intent-to-use" trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law (collectively, "Excluded Assets"). Notwithstanding anything to the contrary herein, (x) the Loan Parties shall not be required to grant a security interest in any Collateral or perfect a security interest in (A) any Collateral to the extent the burden or cost of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Borrower and the Administrative Agent or (B) in any contract, license or permit, if the granting of a security interest in such asset would be prohibited by enforceable anti-assignment provisions of contracts or Applicable Law or a pledge would violate the terms of any contract with respect to such assets (in each case, after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other Applicable Law) or would trigger termination pursuant to any "change of control" or similar provision in any contract and (y) the Administrative Agent's Lien in the following Collateral shall not be required to be perfected (A) motor vehicles and any other assets subject to state law certificate of title statutes, (B) commercial tort claims with an individual value not in excess of $1,000,000, (C) letter of credit rights to the extent not perfected by the filing of a financing statement under the Uniform Commercial Code and (D) Excluded Deposit Accounts.

Section 5.10 Fiscal Year; Accounting. In the case of Holdings and the Borrower, (i) cause its fiscal year to end on June 30 and (ii) prohibit any change to the accounting policies or reporting practices of the Loan Parties, except in accordance with GAAP.

Section 5.11 [RESERVED].

Section 5.12 Collateral Monitoring and Reporting.

(a) Borrowing Base Certificates. The Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders) monthly Borrowing Base Certificates by the 15th Business Day of each month prepared as of the close of business on the last Business Day of the previous month or if a Liquidity Event shall have occurred and be continuing, the Borrower shall deliver to the Administrative Agent weekly Borrowing Base Certificates by the fourth Business Day of every week prepared as of the close of business on Saturday of the previous week, which weekly Borrowing Base Certificates shall be in the form of Exhibit F unless otherwise reasonably agreed to by the Administrative Agent. All calculations of Availability 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 to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve. By the 20th day after the end of each fiscal quarter (commencing with the fiscal quarter ending March 31, 2021), the Borrower shall deliver updates, if any, to Schedule 2(b) to the Perfection Certificate most recently delivered to reflect all locations of Inventory at the end of such fiscal quarter. Concurrently with the delivery of each Borrowing Base Certificate pursuant to this Section 5.12(a), the Borrower shall deliver to the Administrative Agent a Consolidated Cash Balance Report setting forth the Consolidated Cash Balance as of the end of the prior Business Day.

(b) Records and Schedules of Accounts. The Borrower shall keep accurate and complete records of its Accounts and Credit Card Receivables, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form satisfactory to the Administrative Agent on a periodic basis (but not more frequently than at the time of delivery of each Borrowing Base Certificate pursuant to paragraph (a) of this Section 5.12). The Borrower shall also provide to the Administrative Agent, on or before the 15th Business Day of each month, listing by credit card provider of all outstanding Credit Card Receivables as of the end of the preceding month.

(c) Proceeds of Collateral. The Borrower shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Deposit Account subject to a Control Agreement. If the Borrower receives cash or any check, draft or other item of payment payable to the Borrower with respect to any Collateral, it shall hold the same in trust for the Administrative Agent and promptly deposit the same into a Collateral Deposit Account subject to a Control Agreement.

(d) Administration of Deposit Accounts; Control Agreements.

(i) Schedule 5.12 sets forth all Deposit Accounts (including Excluded Deposit Accounts), securities accounts and commodities accounts maintained by the Loan Parties, including all Collateral Deposit Accounts, as of the Closing Date. Each Loan Party shall be the sole account holder of each Deposit Account (other than Excluded Deposit Accounts) and shall not allow any other Person (other than the Administrative Agent and the Term Loan Agent (which shall have a first priority interest in only those Deposit Accounts that are exclusively maintained for and contain only the identifiable proceeds of Term Loan Priority Collateral)) to have control over a Deposit Account (other than Excluded Deposit Accounts) or any deposits therein. The Borrower (A) shall promptly notify the Administrative Agent of (x) any opening or closing of a Deposit Account (other than any Excluded Deposit Account) and (y) any Excluded Deposit Account ceasing to constitute an Excluded Deposit Account, and (B) shall not open any Deposit Accounts (other than any Excluded Deposit Accounts) at a Bank not reasonably acceptable to the Administrative Agent.

(ii) On or before the Closing Date, (i) each Loan Party shall execute and deliver to the Administrative Agent Control Agreements for each Deposit Account maintained by such Loan Party (other than Excluded Deposit Accounts), (ii) the Borrower shall establish the General Unsecured Cash Fund Deposit Account, and (iii) the Borrower shall continue to maintain the Dominion Account. After the Closing Date, each Loan Party will comply with the terms of this Section 5.12(d).

(iii) Before opening or replacing any Collateral Deposit Account or other Deposit Account (other than Excluded Deposit Accounts), each Loan Party shall cause each bank or financial institution in which it seeks to open a Collateral Deposit Account or other such Deposit Account, to enter into a Control Agreement with the Administrative Agent in order to give the Administrative Agent Control of such Collateral Deposit Account or other Deposit Account and provide for a daily sweep into the WF Concentration Account (other than (x) amounts necessary to cover required account fees to be debited from such Deposit Account by the applicable depository bank with respect to such Deposit Account and, thereafter, and (y) an additional amount up to $5,000 that can be kept in each account for overdraft protection). In the case of Deposit Accounts maintained with Lenders, the terms of such agreements shall be subject to the provisions of the Credit Agreement regarding setoffs.

(iv) Each Loan Party shall cause each bank or other depository institution at which any Deposit Account (excluding for the avoidance of doubt, the Operating Account) is maintained for the collection of Accounts, sales revenue, payments by any Account Debtor and other cash receipts (each, a "Collateral Deposit Account"), which Collateral Deposit Accounts as of the Closing Date are identified as such on Schedule 5.12, to transfer to the WF Concentration Account by standing wire (or alternative funds transfer method), on a daily basis, the full amount of the collected and available balance in each such Deposit Account maintained by any Loan Party at the beginning of each Business Day (other than (x) amounts necessary to cover required account fees to be debited from such Deposit Account by the applicable depository bank with respect to such Deposit Account and, thereafter, and (y) an additional amount up to $5,000 that can be kept in each account for overdraft protection). Each Loan Party irrevocably appoints the Administrative Agent as such Loan Party's attorney-in-fact to collect such balances during a Cash Dominion Trigger Period to the extent any such delivery is not so made. Other than during a Cash Dominion Trigger Period, collections which are received into the WF Concentration Account shall be deposited into the Operating Account. During a Cash Dominion Trigger Period, collections which are received into the WF Concentration Account shall be transferred by standing wire (or alternative funds transfer method) on a daily basis to the Dominion Account and applied in accordance with Section 2.10.

(v) Each Loan Party will provide (or with respect to securities accounts and commodities accounts existing on the Closing Date, will have provided) to the Administrative Agent a Control Agreement for each securities account and commodities account of such Loan Party promptly after the establishment or acquisition of any such account and prior to transferring or depositing any funds or other assets therein, duly executed on behalf of each financial institution or securities intermediary holding a securities account or commodities account, as applicable, of such Loan Party.

(vi) For the avoidance of doubt, nothing set forth in the Loan Documents shall prohibit (A) the establishment of the General Unsecured Cash Fund and General Unsecured Cash Fund Deposit Account, (B) repayment of amounts for the benefit of the holders of Allowed General Unsecured Claims from the General Unsecured Cash Fund in accordance with the Plan of Reorganization or (C) the deposit of proceeds received by any Loan Party from the Sale Leaseback and Rights Offerings into the General Unsecured Cash Fund Deposit Account in accordance with the Plan of Reorganization.

(vii) Upon the Loan Parties becoming entitled to possession of any remaining funds in the General Unsecured Cash Fund Deposit Account in accordance with Section VI.F.3 of the Plan of Reorganization, the Loan Parties shall promptly transfer all such remaining funds directly to the WF Concentration Account.

Section 5.13 Use of Proceeds. The Borrower will use Letters of Credit and Revolver Loans (a) to pay fees, interest, payments (including funding a portion of the General Unsecured Cash Fund in accordance with the terms of the Plan of Reorganization) and expenses associated with the consummation of the Plan of Reorganization, (b) to refinance the Existing Debt, (c) for working capital needs and (d) other general corporate purposes of the Borrower and its Subsidiaries.

ARTICLE VI

Negative Covenants

Each of Holdings (solely as to Section 6.08(a)) and the other Loan Parties covenants and agrees with the Administrative Agent, each Lender and each Issuing Bank that until the Secured Obligations are Paid in Full, unless the Required Lenders shall otherwise consent in writing, the Loan Parties will not and will not permit any of their Subsidiaries to (and Holdings as to Section 6.08(a), will not):

Section 6.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) Indebtedness pursuant to Swap Agreements not incurred for speculative purposes;

(c) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to the Borrower or any Subsidiary;

(d) Indebtedness of the Borrower owed to any Subsidiary and of any Subsidiary owed to the Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Subsidiary Guarantor owed to the Loan Parties is permitted under Section 6.04(b) and (ii) Indebtedness of the Borrower and of any other Loan Party owed to any Subsidiary that is not a Subsidiary Guarantor ("Subordinated Intercompany Debt") shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(e) Indebtedness in respect of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Indebtedness in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);

(f) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protection and similar arrangements, in each case, incurred in the ordinary course of business in connection with cash management and deposit accounts;

(g) (x) Indebtedness assumed or acquired in connection with Permitted Business Acquisitions, which Indebtedness may be secured only by the assets acquired in connection with such Permitted Business Acquisitions or unsecured, and provided that (A) such Indebtedness exists at the time of such Permitted Business Acquisition and is not incurred in contemplation of such event and (B) after giving effect to the assumption or acquisition of such Indebtedness, the Payment Conditions are satisfied and (y) any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; provided that in the case of clauses (x) and (y) if such Indebtedness is incurred by the Borrower or any Loan Party and secured with ABL Priority Collateral, such Indebtedness shall be secured only by a Junior Lien with respect to the ABL Priority Collateral pursuant to an intercreditor agreement satisfactory to the Administrative Agent and the Required Lenders;

(h) Capital Lease Obligations, mortgage financings and purchase money Indebtedness (including any industrial revenue bond, industrial development bond and similar financings) incurred by the Borrower or any Subsidiary prior to or within two hundred seventy (270) days after the acquisition, lease, repair or improvement of the respective asset in order to finance such acquisition, lease, repair or improvement, and any Permitted Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount that at the time of, and after giving effect to, the incurrence thereof (together with Indebtedness outstanding pursuant to paragraph (i) of this Section 6.01) would not exceed $15.0 million;

(i) Capital Lease Obligations incurred by the Borrower or any Subsidiary in respect of any Sale and Lease-Back Transaction that is permitted under Section 6.03 and any Permitted Refinancing Indebtedness in respect thereof in an aggregate outstanding principal amount that at the time of, and after giving effect to the incurrence of (together with Indebtedness outstanding pursuant to paragraph (h) of this Section 6.01) would not exceed $15.0 million;

(j) Indebtedness of the Loan Parties constituting Term Loan Obligations, in an aggregate outstanding principal not to exceed the sum of (i) $25.0 million *plus* (ii) the amount of capitalized (i.e., paid in kind) interest accruing on the Term Loan Obligations in accordance with the Term Loan Documents;

(k) Guarantees (i) by the Loan Parties of the Indebtedness described in Section 6.01(j) and Section 6.01(o), (ii) by the Borrower or any Loan Party of any Indebtedness of any other Loan Party permitted to be incurred under this Agreement, (iii) by the Borrower or any Loan Party of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Subsidiary Guarantor, (iv) by any Subsidiary that is not a Loan Party of Indebtedness of Holdings and its Subsidiaries to the extent, in the case of clauses (iii) and (iv), such Guarantees are permitted by Section 6.04(b) or (j)(ii); provided that Guarantees by the Borrower or any Loan Party under this Section 6.01(k) of any other Indebtedness of a Person that is subordinated to the Obligations shall be expressly subordinated to the Obligations on terms not materially less favorable to the Lenders as those governing the subordination of such other Indebtedness to the Obligations; provided further that no Guarantee by Holdings or any of its Subsidiaries of any Subordinated Indebtedness or the Indebtedness described in Section 6.01(j) shall be permitted unless Holdings or the applicable Subsidiaries, as the case may be, shall have also provided a Guarantee of the Obligations under the Loan Documents on substantially the terms set forth in the applicable Guarantee of such Indebtedness or on terms acceptable to the Administrative Agent;

(l) Indebtedness arising from agreements of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase or acquisition price or similar obligations (including without limitation earn-out obligations), in each case, incurred or assumed in connection with the acquisition or Disposition of any business or assets (including Equity Interests of Subsidiaries) of the Borrower or any Subsidiary permitted by Section 6.04 or Section 6.05, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business or assets for the purpose of financing such acquisition; provided that the aggregate maximum liability of the Borrower and its Subsidiaries in respect of any such Indebtedness does not exceed $10.0 million in the aggregate at any one time;

(m) [Reserved];

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) (i) additional Indebtedness of the Borrower or any Subsidiary and (ii) any Permitted Refinancing Indebtedness in respect thereof; provided that (x) after giving effect to such incurrence or issuance, no Event of Default shall have occurred and be continuing, (y) such Indebtedness shall be Subordinated Indebtedness that matures no earlier than the date that is, and has a Weighted Average Life to Maturity no shorter than, at the time of such incurrence or issuance, ninety-one (91) days after the Revolver Termination Date and (z) after giving effect to any such incurrence or issuance of such Indebtedness, the Payment Conditions are satisfied;

(p) [Reserved];

(q) Indebtedness existing on the Closing Date and set forth on Schedule 6.01 and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness;

(r) Indebtedness not in respect of borrowed money supported by a Letter of Credit, in a principal amount not in excess of the Stated Amount of such Letter of Credit;

(s) Indebtedness incurred by the Borrower and its Subsidiaries representing deferred compensation to directors, officers, employees, members of management and consultants of Holdings, any Parent Entity, the Borrower or any Subsidiary in the ordinary course of business in an aggregate amount at any one time outstanding not to exceed $10.0 million;

(t) Indebtedness consisting of promissory notes issued by the Borrower and its Subsidiaries to current or former directors, officers, employees, members of management or consultants of, Holdings, any Parent Entity, the Borrower or any Subsidiary (or their respective estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner) to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06(b) in an aggregate amount at any one time outstanding not to exceed $7.5 million;

(u) Indebtedness in respect of letters of credit, bankers' acceptances supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(v) Indebtedness arising out of the creation of any Lien (other than Liens securing debt for borrowed money) permitted under Section 6.02;

(w) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(x) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that they are permitted to remain unfunded under Applicable Law;

(y) other Indebtedness of any Borrower or any Subsidiary that is unsecured or secured by a Lien permitted under Section 6.02(y), in an aggregate outstanding principal amount not to exceed $5.0 million at any one time outstanding and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; and

(z) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness described in paragraphs (a) through (y) above.

Section 6.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests, evidences of Indebtedness or other securities of any Person) at the time owned by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrower and the Subsidiaries existing on the Closing Date and set forth on Schedule 6.02 and any refinancing, modification, replacement, renewal or extension thereof; provided, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof;

(b) any Lien (i) created under the Loan Documents, (ii) on cash or deposits granted in favor of any Issuing Bank hereunder to cash collateralize any Defaulting Lender's participation in Letters of Credit issued under this Agreement, as applicable and (iii) securing Term Loan Obligations permitted by Section 6.01(j) so long as such Liens are at all times subject to the Intercreditor Agreement;

(c) any Lien securing Indebtedness or Permitted Refinancing Indebtedness permitted by Section 6.01(g), provided that such Lien (A) in the case of Liens securing Capital Lease Obligations and purchase money Indebtedness, applies solely to the assets securing such Indebtedness immediately prior to the consummation of the related Permitted Business Acquisition and after acquired property that is affixed to or incorporated in the assets securing such Indebtedness, to the extent required by the documentation governing such Indebtedness (without giving effect to any amendment thereof effected in contemplation of such acquisition or assumption), and the proceeds and products thereof (provided that individual financings provided by one (1) Person (or its Affiliates) otherwise permitted to be secured by Liens under this clause (c) may be cross-collateralized to other such financings provided by such Person (or its Affiliates)), (B) in the case of Liens securing Indebtedness other than Capital Lease Obligations or purchase money Indebtedness, such Liens do not extend to the property of any Person other than the Person acquired in such acquisition and the subsidiaries of such Person (and the Equity Interests in such Person), (C) in the case of clause (A) and clause (B), such Lien is not created in contemplation of or in connection with such acquisition or assumption, (D) in the case of a Lien securing Permitted Refinancing Indebtedness, any such Lien is permitted, subject to compliance with clause (e) of the definition of the term "Permitted Refinancing Indebtedness" and (E) in the case of any Indebtedness incurred by the Borrower or any Loan Party and secured with ABL Priority Collateral, such Indebtedness shall be secured only by a Junior Lien on such ABL Priority Collateral pursuant to an intercreditor arrangement satisfactory to the Administrative Agent;

(d) Liens for Taxes, assessments or other governmental charges or levies which are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, which are being contested in accordance with Section 5.03;

(e) landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, which are being contested in accordance with Section 5.03;

(f) (i) pledges and deposits made (including to support obligations in respect of letters of credit, bank guarantees or similar instruments to secure) in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing premiums or liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations or otherwise as permitted in Section 6.01(c) and (ii) pledges and deposits securing liability for reimbursement or indemnification obligations of (including to support obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) insurance carriers in respect of property, casualty or liability insurance to the Borrower or any Subsidiary provided by such insurance carriers;

(g) (i) deposits to secure the performance of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business and (ii) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items set forth in clause (i) of this Section 6.02(g);

(h) zoning restrictions, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(i) Liens securing Capital Lease Obligations, mortgage financings, and purchase money Indebtedness or improvements thereto hereafter acquired, leased, repaired or improved by the Borrower or any Subsidiary (including the interests

of vendors and lessors under conditional sale and title retention agreements); provided that (i) such security interests secure only Indebtedness permitted by Section 6.01(h) (including any Permitted Refinancing Indebtedness in respect thereof), (ii) such security interests are created, and the Indebtedness secured thereby is incurred, within two hundred seventy (270) days after such acquisition, lease, completion of construction or repair or improvement (except in the case of any Permitted Refinancing Indebtedness), (iii) the Indebtedness secured thereby does not exceed the cost of such equipment or other property or improvements at the time of such acquisition or construction, including transaction costs (including any fees, costs or expenses or prepaid interest or similar items) incurred by the Borrower or any Subsidiary in connection with such acquisition or construction or material repair or improvement or financing thereof and (iv) such security interests do not apply to any other property or assets of the Borrower or any Subsidiary (other than to the proceeds and products of and the accessions to such equipment or other property or improvements but not to other parts of the property to which any such improvements are made; provided that individual financings provided by one (1) Person (or its Affiliates) otherwise permitted to be secured by Liens under this clause (i) may be cross-collateralized to other such financings provided by such Person (or its Affiliates));

(j) Liens arising out of (i) Sale and Lease-Back Transactions permitted under Section 6.03 and (ii) any Indebtedness incurred in connection therewith permitted by Section 6.01(i) (and any Permitted Refinancing Indebtedness in respect thereof), so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds or products thereof and related property;

(k) Liens securing judgments that do not constitute an Event of Default under Section 7.01(j);

(l) Liens disclosed by the title insurance policies delivered in connection with the Mortgages or pursuant to Section 5.09 and any replacement, extension or renewal of any such Lien; provided that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;

(m) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by the Borrower or any Subsidiary in the ordinary course of business;

(n) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary, (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(p) Liens securing obligations in respect letters of credit permitted under Section 6.01(c), (e), (r) and (u);

(q) (i) leases, subleases, licenses or sublicenses of property in the ordinary course of business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;

(r) 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;

(s) Liens (i) solely on any cash earnest money deposits or Permitted Investments made by the Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Permitted Business Acquisition or other Investment permitted hereunder and (ii) consisting of an agreement to dispose of any property in a transaction permitted under Section 6.05;

(t) Liens arising from precautionary UCC financing statements (or similar filings under other Applicable Law) regarding operating leases or consignment or bailee arrangements;

(u) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under clause (c) of the definition thereof arising out of such repurchase transaction;

(v) (i) Liens on Equity Interests in Joint Ventures securing obligations of such Joint Venture and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements entered into in the ordinary course of business;

(w) Liens in favor of the Borrower or the Subsidiaries that are Loan Parties securing intercompany Indebtedness permitted under Section 6.04;

(x) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or the Subsidiaries in the ordinary course of business and (ii) arising by operation of law under Article 2 of the Uniform Commercial Code;

(y) Liens with respect to property or assets of any Borrower or any Subsidiaries securing Indebtedness permitted under Section 6.01(y); provided that (i) the aggregate principal amount of the Indebtedness or other obligations secured by such Liens does not exceed $5.0 million at any time outstanding and (ii) any such Liens on Borrowing Base Collateral shall be Junior Liens;

(z) Liens on insurance policies and the proceeds thereof securing the financing of Indebtedness permitted pursuant to Section 6.01(n)(i);

(aa) ground leases in the ordinary course in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located; and

(bb) (i) Liens in favor of the Administrative Agent for the benefit of the Secured Parties securing obligations under Swap Agreements permitted by Section 6.01,(ii) Liens in favor of the Administrative Agent for the benefit of the Secured Parties securing Cash Management Obligations permitted by Section 6.01 and (iii) Liens in favor of the Administrative Agent for the benefit of the Secured Parties securing Secured Bank Product Obligations permitted by Section 6.01.

Section 6.03 Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any fixed or capital assets, used or useful in its business, whether now owned or hereafter acquired, and substantially contemporaneously rent or lease from the transferee such fixed or capital assets that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Lease-Back Transaction"), except for (a) the Sale Leaseback and (b) any such sale of any fixed or capital assets acquired by the Borrower or any Subsidiary after the Closing Date that is permitted under Section 6.05(g) and is consummated within ninety (90) days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

Section 6.04 Investments, Loans and Advances. Purchase, hold or acquire any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, another Person, or make any Acquisition (each, an "Investment"), except:

(a) Investments among the Borrower and the Subsidiary Guarantors;

(b) Investments by the Borrower and the Subsidiary Guarantors in Subsidiaries that are not Subsidiary Guarantors; provided that (i) no Event of Default shall have occurred and be continuing at the time any such Investment is made and (ii) the sum of all such Investments (valued at the time of the making thereof and without giving effect to any write-downs or write-offs thereof, but net in the case of intercompany loans, and in any event, after giving effect to any returns, profits, distributions, and similar amounts, repayment of loans and the release of guarantees) made on or after the Closing Date shall not exceed an aggregate net amount equal to $5.0 million outstanding at any time; and provided further that intercompany current liabilities incurred in the ordinary course of

business in connection with the cash management operations of the Borrower and its Subsidiaries shall not be included in calculating the limitation in this paragraph at any time;

(c) Permitted Investments and investments that were Permitted Investments when made;

(d) Investments arising out of the receipt by the Borrower or any Subsidiary of promissory notes and other non-cash consideration for Dispositions permitted under Section 6.05 (excluding clauses (a), (b), (d), (e), (f)(i), (j), (k), (p), (r), (u), and (v) of Section 6.05);

(e) (i) loans and advances to directors, officers, employees, members of management or consultants of Holdings (or any Parent Entity), the Borrower or any Subsidiary in the ordinary course of business not to exceed $1.0 million in the aggregate at any time outstanding (calculated without regard to write-downs or write-offs thereof) and (ii) advances of payroll payments and expenses to directors, officers, employees, members of management or consultants in the ordinary course of business;

(f) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the ordinary course of business;

(g) Investments under Swap Agreements permitted pursuant to Section 6.01;

(h) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 6.04 and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except by terms thereof or as otherwise permitted by this Section 6.04;

(i) Investments resulting from pledges and deposits permitted by Section 6.02(b)(ii), (f) and (g);

(j) Investments (i) constituting Permitted Business Acquisitions and (ii) by any Subsidiary that is not a Subsidiary Guarantor in any other Subsidiary that is not a Subsidiary Guarantor;

(k) Guarantees (i) permitted by Section 6.01(k) and (ii) of leases (other than Capital Lease Obligations) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(l) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the ordinary course of business;

(m) [reserved;]

(n) [reserved;]

(o) Investments in Holdings in amounts and for purposes for which Restricted Payments to Holdings would have been permitted under Section 6.06, in lieu of such Restricted Payments;

(p) to the extent constituting Investments, (i) Sale and Lease-Back Transactions, (ii) Restricted Payments, and (iii) prepayments and repurchases of Indebtedness expressly permitted under Section 6.03 and/or 6.06;

(q) so long as no Default or Event of Default shall have occurred and be continuing, Investments made in cash by the Borrower or any Subsidiary in an outstanding aggregate amount (valued at the time of the making thereof, and without giving effect

to any write-downs or write-offs thereof) not to exceed $7.5 million, (plus any returns, profits, distributions and similar amounts, and the repayments of loans in respect of Investments theretofore made by it pursuant to this paragraph (q));

(r) other Investments (other than Guarantees) made in cash by the Borrower or any Subsidiary so long as the Payment Conditions are satisfied;

(s) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers; and

(t) Investments to the extent the consideration paid therefor consists solely of Equity Interests of any Parent Entity not resulting in a Change in Control.

Notwithstanding anything to the contrary in this Agreement, in no event shall any Loan Party make any Investment consisting of, or otherwise contribute or transfer, any Material Intellectual Property to any Person that is not a Loan Party other than to the extent constituting non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of the Borrower and its Subsidiaries.

Section 6.05 Mergers, Consolidations and Dispositions. Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or Dispose of (in one (1) transaction or in a series of related transactions) all or any part of its assets (whether now owned or hereafter acquired), or Dispose of any Equity Interests of any Subsidiary of the Borrower (including pursuant to any Division), except that this Section shall not prohibit:

(a) (i) the Disposition of inventory and equipment in the ordinary course of business by the Borrower or any Subsidiary, (ii) the Disposition of surplus, obsolete, used or worn out property (other than Inventory), whether now owned or hereafter acquired, in the ordinary course of business by the Borrower or any Subsidiary, (iii) the leasing or subleasing of real property in the ordinary course of business by the Borrower or any Subsidiary or (iv) the Disposition of Permitted Investments in the ordinary course of business;

(b) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (i) the merger of any Subsidiary of Holdings (which shall either be (A) newly formed expressly for the purpose of such transaction and which owns no assets, (B) Intermediate Holdings or (C) a Subsidiary of the Borrower) into the Borrower in a transaction in which the Borrower is the surviving or resulting entity or the surviving or resulting Person expressly assumes the obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent (for the avoidance of doubt, the Borrower shall not be permitted to consummate a Division), (ii) the merger or consolidation of any Subsidiary with or into any other Subsidiary; provided that in any such merger or consolidation involving any Subsidiary Guarantor, a Subsidiary Guarantor shall be the surviving or resulting Person, (iii) the liquidation or dissolution of any Subsidiary (other than the Borrower) if the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and the assets of such liquidating or dissolving Subsidiary are transferred to the Borrower or a Subsidiary Guarantor, or (iv) the merger of Parent and Intermediate Holdings (or the dissolution or consolidation of Intermediate Holdings);

(c) Dispositions among the Borrower and the Subsidiary Guarantors (upon voluntary liquidation or otherwise);

(d) [reserved];

(e) to the extent constituting a Disposition, Liens permitted by Section 6.02, Investments permitted by Section 6.04 (other than Section 6.04(p)), and Restricted Payments permitted by Section 6.06 (other than Section 6.06(e));

(f) Dispositions of receivables in the ordinary course of business (i) not as part of an accounts receivables financing transaction or (ii) in connection with the collection, settlement or compromise thereof in a bankruptcy or similar proceeding;

(g) Dispositions by the Borrower or any Subsidiary of assets not otherwise permitted by this Section 6.05; provided that the consideration for any Disposition shall be at least 75% cash consideration (provided that for purposes of the 75% cash

consideration requirement (w) the amount of any Indebtedness or other liabilities of the Borrower or any Subsidiary (as shown on such Person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection and substantially contemporaneously with such Disposition, and (y) any securities received by such Subsidiary from such transferee that are converted by such Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) substantially contemporaneously following the closing of the applicable Disposition, in each case, shall be deemed to be cash); provided further that immediately prior to and after giving effect to such Disposition, no Event of Default shall have occurred or be continuing; provided further that prior to or concurrently with any such Disposition involving Borrowing Base Collateral, an updated Borrowing Base Certificate (based on the Borrowing Base Certificate most recently provided or required to be provided as of that date by the Borrower) shall have been provided to the Administrative Agent setting forth the adjusted figures thereon on a Pro Forma Basis for such Disposition and no Overadvance shall exist after giving pro forma effect thereto;

(h) Dispositions by the Borrower or any Subsidiary of assets that were acquired in connection with an acquisition permitted hereunder (including, without limitation, Permitted Business Acquisitions); provided that any such sale, transfer, lease or other disposition shall be made or contractually committed to be made within two hundred seventy (270) days of the date such assets were acquired by the Borrower or such Subsidiary; and provided further that, the Payment Conditions are satisfied at the time of such Disposition; and provided further that prior to or concurrently with any such Disposition involving Borrowing Base Collateral, an updated Borrowing Base Certificate (based on the Borrowing Base Certificate most recently provided or required to be provided as of that date by the Borrower) shall have been provided to the Administrative Agent setting forth the adjusted figures thereon on a Pro Forma Basis for such Disposition and no Overadvance shall exist after giving pro forma effect thereto;

(i) any merger or consolidation in connection with an Investment permitted under Section 6.04; provided that (i) if the continuing or surviving Person is a Loan Party or a Subsidiary of a Loan Party, such Loan Party or Subsidiary shall have complied with its obligations under Section 5.09 (if any), and (ii) if the Borrower is a party thereto, the Borrower shall be the continuing or surviving Person or the continuing or surviving Person shall assume the obligations of the Borrower in a manner reasonably acceptable to the Administrative Agent;

(j) licensing and cross-licensing arrangements involving any technology or other intellectual property of the Borrower or any Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of or materially detracting from the value of the business of the Borrower and its Subsidiaries;

(k) Dispositions of Inventory or other property of the Borrower and the Subsidiaries determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or any of its Subsidiaries; provided that, if any such Inventory was included in the calculation of the Borrowing Base in the most recently delivered Borrowing Base Certificate, then prior to or concurrently with any such Disposition involving Inventory, an updated Borrowing Base Certificate (based on the Borrowing Base Certificate most recently provided or required to be provided as of that date by the Borrower) shall have been provided to the Administrative Agent setting forth the adjusted figures thereon on a Pro Forma Basis for such Disposition and no Overadvance shall exist after giving pro forma effect thereto;

(l) [reserved];

(m) the issuance of Qualified Capital Stock by the Borrower;

(n) sales of Equity Interests of any Subsidiary of the Borrower; provided that, in the case of the sale of the Equity Interests of a Subsidiary Guarantor, the purchaser shall be the Borrower or another Subsidiary Guarantor or such transaction shall fit within another clause of this Section 6.05 or constitute an Investment permitted by Section 6.04 (other than Section 6.04(p));

(o) Dispositions of property (other than Borrowing Base Collateral) 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, transfer, lease or other disposition are promptly applied to the purchase price of such replacement property;

(p) leases, subleases, licenses or sublicenses of property (other than intellectual property) in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Subsidiaries;

(q) Dispositions of property subject to casualty or condemnation proceeding (including in lieu thereof) upon receipt of the net proceeds therefor;

(r) Dispositions of property in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and the Subsidiaries;

(s) Dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in, joint venture arrangements and similar binding arrangements;

(t) [reserved];

(u) terminations of Swap Agreements;

(v) the expiration of any option agreement in respect of real or personal property;

(w) [reserved];

(x) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business;

(y) [reserved];

(z) any change in form of entity of any Subsidiary if the Borrower determines in good faith that such change in form is in the best interests of the Borrower; provided that the Borrower and such Subsidiary shall substantially concurrently with such change in form take all actions necessary, if any, to preserve the perfection of the Administrative Agent's Lien on the Equity Interests in and Property of such Subsidiary (other than any Excluded Assets);

(aa) as long as (i) no Event of Default then exists or would arise therefrom and (ii) Availability on the date of the proposed transaction (calculated on a Pro Forma Basis) is equal to or greater than 10.0% of the Line Cap, bulk sales or other dispositions of the Loan Parties' Inventory outside of the ordinary course of business in connection with store closings that are conducted on an arm's-length basis and not to an Affiliate; provided that such store closures and related Inventory dispositions shall not exceed, in any fiscal year 20.0% of the number of the Loan Parties' stores as of the beginning of such fiscal year (net of store relocations wherein a binding lease has been entered into for a new store opening prior to the related store closure date); provided, further, that all sales of Inventory in connection with store closings shall be paid to a Deposit Account that is subject to a Control Agreement; provided further that prior to or concurrently with any such Disposition of Inventory under this clause (aa), an updated Borrowing Base Certificate (based on the Borrowing Base Certificate most recently provided or required to be provided as of that date by the Borrower) shall have been provided to the Administrative Agent setting forth the adjusted figures thereon on a Pro Forma Basis for such Disposition and no Overadvance shall exist after giving pro forma effect thereto; and

(bb) the Sale Leaseback in accordance with the Plan of Reorganization.

Notwithstanding anything to the contrary contained above in this Section 6.05, (i) no Disposition or series of related Dispositions in excess of $1.0 million shall be permitted by this Section 6.05 (other than Dispositions pursuant to clause (a)(ii), (b), (c), (i), (k), (r), (s), (u), or (v)) unless such Disposition is for fair market value (as reasonably determined by the Borrower), (ii) no Disposition of Borrowing Base Collateral shall be permitted by paragraph (aa) of this Section 6.05 without receiving at least 75% cash consideration for each such Disposition, (iii) no Disposition shall be permitted by paragraph (k) of this Section 6.05 unless such Disposition is for at

least 75% cash consideration for each such Disposition, (iv) no Disposition or series of related Dispositions in excess of $1.5 million shall be permitted by paragraph (h) of this Section 6.05 unless such Disposition is for at least 75% cash consideration; provided that for purposes of the 75% cash consideration requirement in the foregoing clauses (iii) and (iv), (w) the amount of any Indebtedness or other liabilities of the Borrower or any Subsidiary (as shown on such Person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection and substantially contemporaneously with such Disposition, and (y) any securities received by such Subsidiary from such transferee that are converted by such Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) substantially contemporaneously with the closing of the applicable Disposition, in each case, shall be deemed to be cash, (v) no Disposition of Borrowing Base Collateral shall be permitted under this Section 6.05 (other than pursuant to clause (a)(i) hereof) unless (A) such Disposition is to a Loan Party or (B) an updated Borrowing Base Certificate (based on the Borrowing Base Certificate most recently provided or required to be provided as of that date by the Borrower) shall have been provided to the Administrative Agent setting forth the adjusted figures thereon on a Pro Forma Basis for such Disposition and no Overadvance shall exist after giving pro forma effect thereto, and (vi) in no event shall (x) any Loan Party Dispose of any Material Intellectual Property to any Person that is not a Loan Party other than to the extent constituting non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of the Borrower and its Subsidiaries or (y) any Subsidiary that is not a Loan Party own or develop any Material Intellectual Property.

Section 6.06 Dividends and Distributions. Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any Equity Interests of the Borrower (other than dividends and distributions on such Equity Interests payable solely by the issuance of additional Equity Interests of the Borrower) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any Equity Interests of the Borrower or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests of the Person redeeming, purchasing, retiring or acquiring such shares) (a "Restricted Payment"); provided, however, that:

(a) the Borrower may make Restricted Payments in cash as shall be necessary to allow Holdings (or any Parent Entity) (i) to pay operating expenses in the ordinary course of business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management and consultants of Holdings (or any Parent Entity) directly attributable and reasonably allocated to the ownership or operations of Holdings, the Borrower and the Subsidiaries), (ii) to pay fees and expenses related to any debt or equity offering, investment or acquisition permitted hereunder (whether or not successful), and (iii) to pay franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of the Borrower and in order to permit Holdings to make payments (other than cash interest payments) which would otherwise be permitted to be paid by the Borrower under Section 6.07(b);

(b) the Borrower may make Restricted Payments in the form of cash or, to the extent permitted by Section 6.01(t), unsecured Indebtedness consisting of promissory notes, the proceeds of which are used to purchase or redeem the Equity Interests of Holdings or any Parent Entity (including related stock appreciation rights or similar securities) held by then present or former directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) or by any Plan, in each case, pursuant to and in accordance with stock option plans or other benefit plans for management or employees, provided that the aggregate amount of such Restricted Payments under this paragraph (b) shall not exceed $2.5 million in any fiscal year, which, if not used in any year, may be carried forward to the next subsequent fiscal year;

(c) repurchases of Equity Interests in Holdings (or any Parent Entity), the Borrower or any Subsidiary deemed to occur upon exercise of stock options or similar Equity Interests if such repurchased Equity Interests represent a portion of the exercise price of such options or taxes to be paid in connection therewith;

(d) the Borrower and any Subsidiary of the Borrower may make Restricted Payments in cash to any direct or indirect member of an affiliated group of corporations that files a consolidated U.S. federal tax return with the Borrower (the "Tax Distributions"), provided that, such Tax Distributions shall not exceed the excess of (i) the amount that the Borrower or such Subsidiaries would have been required to pay in respect of federal, state or local taxes, as the case may be, in respect of such year if the Borrower or

such Subsidiaries had paid such taxes directly as a stand-alone taxpayer or stand-alone group and (ii) the portion of such federal, state or local taxes that is paid by the Borrower or such Subsidiaries;

(e) to the extent constituting a Restricted Payment, the Borrower and the Subsidiaries may enter into transactions expressly permitted by Section 6.05(b) or (m);

(f) the proceeds of which shall be used by Holdings to make (or to make a Restricted Payment to any Parent Entity to enable it to make) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of Holdings or any Parent Entity;

(g) payments made by the Borrower or any of its Subsidiaries in cash in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management or consultants of the Borrower (or any Parent Entity) or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of the foregoing) and any repurchases of Equity Interests in consideration for such payments including demand repurchases in connection with the exercise of stock options;

(h) the Borrower may make Restricted Payments to Holdings in cash so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Restricted Payment;

(i) redemptions, repurchases, retirements or other acquisitions of Equity Interests of the Borrower or any Parent Entity in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Subsidiary) of, Equity Interests of the Borrower or any Parent Entity (to the extent the proceeds of such sale are contributed to the capital of the Borrower) (in each case, other than any Equity Interests issued or sold that are not Qualified Capital Stock) ("Refunding Capital Stock"); and

(j) the Rights Offerings;

provided that, notwithstanding anything to the contrary herein, no Loan Party may make any Restricted Payment consisting of any Material Intellectual Property.

Section 6.07 Transactions with Affiliates.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates, unless such transaction is (i) otherwise permitted (or required) under this Agreement and (ii) except with respect to Investments permitted by Section 6.04, upon terms no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate.

(b) The foregoing paragraph (a) shall not prohibit,

(i) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Entity,

(ii) loans or advances to directors, officers, employees, members of management or consultants of Holdings, the Borrower or any of its Subsidiaries permitted by Section 6.04,

(iii) transactions among the Loan Parties, in each case otherwise permitted by the Loan Documents,

(iv) the payment of fees and indemnities to directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower and the Subsidiaries in the ordinary course of business,

(v) permitted agreements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect,

(vi) (A) any employment or severance agreements or arrangements entered into by the Borrower or any of the Subsidiaries in the ordinary course of business, (B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors, members of management or consultants, and (C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto,

(vii) Restricted Payments permitted under Section 6.06,

(viii) any purchase by Holdings of or contributions to, the equity capital of the Borrower,

(ix) [reserved],

(x) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the board of directors (or equivalent governing body) of the Borrower from an accounting, appraisal or investment banking firm, in each case of nationally recognized standing, which letter states that such transaction is on terms that are no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate (such letter, a "Fairness Opinion"),

(xi) the Transactions and the other transactions contemplated by the Plan of Reorganization to the extent consummated substantially in accordance with the Plan of Reorganization, including the payment of all fees, expenses, bonuses and awards (including Transaction Costs) related thereto,

(xii) Guarantees permitted by Section 6.01,

(xiii) the issuance and sale of Qualified Capital Stock,

(xiv) [reserved], and

(xv) the indemnification of directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower and its Subsidiaries in accordance with customary practice.

In the event the Borrower or any of its Subsidiaries proposes to consummate any transaction with an Affiliate (other than a transaction permitted under Section 6.07(b)) involving aggregate consideration of at least $30.0 million, the Borrower shall, prior to the consummation of such transaction, deliver a Fairness Opinion with respect to such transaction to the Administrative Agent.

Section 6.08 Business of Holdings, the Borrower and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than:

(a) in the case of Holdings, (i) ownership and acquisition of Equity Interests in Intermediate Holdings or the Borrower, as applicable, together with activities directly related thereto, (ii) performance of its obligations under and in connection with the Loan Documents (and Permitted Refinancing Indebtedness in respect thereof), (iii) actions incidental to the consummation of the Transactions (including the payment of Transaction Costs), (iv) the performance of its obligations after the Closing Date in respect of guaranteeing Indebtedness or obligations of the Borrower and its Subsidiaries, (v) the payment by Holdings, directly or indirectly, of dividends or other distributions (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests, or directly or indirectly redeeming, purchasing, retiring or otherwise acquiring for value any of its Equity Interests or setting aside any amount for any such purpose, (vi) actions required by law to maintain its existence, (vii) the

payment of taxes and other customary obligations, (viii) the issuance of Equity Interests, and (ix) activities incidental to its maintenance and continuance and to the foregoing activities, or

(b) in the case of the Borrower and any Subsidiary, any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Notwithstanding anything to the contrary contained in herein, Holdings shall not sell, dispose of, grant a Lien on or otherwise transfer its Equity Interests in Intermediate Holdings or the Borrower, as applicable (other than (i) Liens created by the Security Documents, (ii) subject to the relevant intercreditor agreement, Liens created by the Term Loan Documents, (iii) Liens arising by operation of law that would be permitted under Section 6.02 or (iv) the sale, disposition or other transfer (whether by purchase and sale, merger, consolidation, liquidation or otherwise) of the Equity Interests of the Borrower to any Parent Entity that becomes a Loan Party and agrees to be bound by this Section 6.08 contemporaneously with the consummation of such transaction).

Section 6.09 Limitation on Modification of Indebtedness; Modification of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) (i) Amend or modify in any manner materially adverse to the Lenders, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders), the articles or certificate of incorporation or by-laws or limited liability company operating agreement of Holdings, the Borrower or any of the Subsidiary Guarantors or (ii) amend, modify or otherwise change, or consent or agree to any amendment, modification, waiver or other change to any Term Loan Document to the extent that any such amendment, modification, waiver or other change would be prohibited by the terms of the Intercreditor Agreement; or

(b) Make, or agree to make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the Term Loan Obligations), or unsecured Indebtedness for borrowed money (including any Indebtedness incurred under Section 6.01(o)), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of such Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the Term Loan Obligations), or unsecured Indebtedness for borrowed money (except for (i) Refinancings otherwise permitted by Section 6.01, (ii) payments of regularly scheduled interest, fees, expenses and indemnification obligations and, to the extent this Agreement is then in effect, principal on the scheduled maturity date thereof, (iii) any AHYDO "catch up" payments and (iv) the conversion of any Subordinated Indebtedness or unsecured Indebtedness for borrowed money to Qualified Capital Stock of Holdings or any Parent Entity (each such payment or distribution, a "Restricted Debt Payment")); provided, however, that any such Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the Term Loan Obligations), or unsecured Indebtedness for borrowed money may be repurchased, redeemed, retired, acquired, cancelled or terminated so long as (x) immediately prior to and after giving effect to such repurchase, no Event of Default shall have occurred or be continuing and (y) the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Restricted Debt Payment.

(c) Permit the Borrower or any Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to (or the repayment of cash advances from) the Borrower or any Subsidiary or (ii) the granting of Liens on Collateral pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(i) restrictions imposed by Applicable Law;

(ii) (A) contractual encumbrances or restrictions in effect on the Closing Date or contained in any agreements related to any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness, or (B) any such encumbrances or restrictions in any Term Loan Documents or Permitted Refinancing Indebtedness in respect thereof, in each case so long as the scope of such encumbrance or restriction is no more expansive in any material respect than any such encumbrance or restriction in effect on the Closing Date (or the date of issuance as the case may be), or any agreement (regardless of whether such agreement is in effect on the Closing Date) providing for the subordination of Subordinated Intercompany Debt;

(iii) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the Disposition of all or substantially all the Equity Interests or assets of such Subsidiary pending the closing of such sale or disposition;

(iv) customary provisions in Joint Venture agreements and other similar agreements applicable to Joint Ventures entered into in the ordinary course of business;

(v) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(vi) customary provisions contained in leases, subleases, licenses or sublicenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(vii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(viii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(ix) customary restrictions and conditions contained in any agreement relating to any Disposition permitted under Section 6.05 pending the consummation of such Disposition;

(x) customary restrictions and conditions contained in the document relating to any Lien, so long as (A) such Lien is permitted under Section 6.02 and such restrictions or conditions relate only to the specific asset subject to such Lien and the proceeds and products thereof, and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(xi) customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations;

(xii) any agreement in effect at the time such Person becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary; or

(xiii) restrictions contained in any documents documenting Indebtedness permitted hereunder of any Subsidiary that is not a Subsidiary Guarantor or required to become a Subsidiary Guarantor.

(d) Make, or agree to make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Term Loan Obligations, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Term Loan Obligations, except to the extent expressly permitted under the Intercreditor Agreement.

(e) in the case of any Loan Party, agree to, or incur, any Contractual Obligation which would prohibit such Loan Party from providing, or continuing to provide, a Guarantee of the Obligations.

Section 6.10 Financial Covenant. The Borrower and its Subsidiaries shall, on any date following the first anniversary of the Closing Date when Availability on such date is less than the greater of (i) 15% of the Line Cap and (ii) $10.0 million (the "FCCR Test Amount"), maintain a Consolidated Fixed Charge Coverage Ratio of at least 1.0 to 1.0, tested for the four fiscal quarter period (or

prior to the Spring-Out Date, the twelve calendar month period) ending on the last day of the most recently ended fiscal quarter (or prior to the Spring-Out Date, calendar month) for which the Borrower has delivered or is required to deliver financial statements to the Administrative Agent in accordance with Section 5.04 of this Agreement, and at the end of each succeeding fiscal quarter (or prior to the Spring-Out Date, calendar month) thereafter until the date on which Availability on such date has exceeded the FCCR Test Amount for thirty (30) consecutive days.

Section 6.11 Use of Proceeds. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that Holdings, its Subsidiaries and its or their respective directors, officers, employees and agents shall not use directly or indirectly, 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 or any Sanctions, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.12 Foreign Subsidiaries. Neither Holdings nor the Borrower shall form or acquire any Foreign Subsidiary.

ARTICLE VII

Events of Default

Section 7.01 Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by any Loan Party in any Loan Document, or in any certificate or other instrument required to be given by any Loan Party in writing furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made pursuant to the terms of the Loan Documents or so furnished by such Loan Party;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any Fee or any other amount (other than an amount referred to in paragraph (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in Sections 5.05(a), 5.07, 5.12(c) or in Article VI;

(e) default shall be made in the (i) failure to deliver a Borrowing Base Certificate required to be delivered pursuant to Section 5.12(a) within two (2) Business Days of the date such Borrowing Base Certificate is required to be delivered or (ii) due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (A) written notice thereof from the Administrative Agent or the Required Lenders to the Borrower or (B) any Responsible Officer of a Loan Party obtaining actual knowledge of such breach or default;

(f) (i) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders any Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) Holdings, the Borrower, or any of the Subsidiaries shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof; provided that this paragraph (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder; provided further that any such failure is unremedied and not waived by the holders of such Indebtedness prior to the acceleration of the Loans pursuant to this Section 7.01;

(g) there shall have occurred a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Holdings, the Borrower or any such Subsidiary, or of a substantial part of the property or assets of Holdings, the Borrower or any material Subsidiary, under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any such Subsidiary or for a substantial part of the property or assets of Holdings, the Borrower or any such Subsidiary or (iii) the winding-up or liquidation of Holdings, the Borrower or any such Subsidiary (except, in the case of any such Subsidiary, in a transaction permitted by Section 6.05); and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings, the Borrower or any Subsidiary, shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any such Subsidiary or for a substantial part of the property or assets of Holdings, the Borrower or any such Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) the failure by Holdings, the Borrower or any Subsidiary to pay one (1) or more final judgments aggregating in excess of $7.5 million (to the extent not covered by third-party insurance as to which the insurer has been notified of such judgment and does not deny coverage), which judgments are not discharged or effectively waived or stayed for a period of sixty (60) consecutive days, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of Holdings, the Borrower or any Subsidiary to enforce any such judgment;

(k) (i) an ERISA Event and/or a Foreign Plan Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Plan(s) or (iii) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such Person does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect;

(l) (i) any Loan Document shall for any reason cease to be, or shall be asserted in writing by Holdings, the Borrower or any Subsidiary not to be, a legal, valid and binding obligation of any party thereto, (ii) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrower and the Subsidiaries on a consolidated basis shall cease to be, or shall be asserted in writing by Holdings, the Borrower or any other Loan Party not to be (other than in a notice to the Administrative Agent to take requisite actions to perfect such Lien), a valid and perfected security interest (perfected as and having the priority required by the Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent (x) any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement, (y) such loss is covered by a lender's title insurance policy as to which the insurer has been notified of such loss and does not deny coverage and the Administrative Agent shall be reasonably satisfied with the credit of such insurer or (z) such loss of perfected security interest may be remedied by the filing of appropriate documentation without the loss of priority or (iii) the Guarantees pursuant to the Security Documents by Holdings, the Borrower or the Subsidiary Guarantors of any of the Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by Holdings or the Borrower or any Subsidiary Guarantor not to be in effect or not to be legal, valid and binding obligations;

(m) except as otherwise expressly permitted hereunder, the Borrower and its Subsidiaries (taken as a whole) shall suspend the operation of their business in the ordinary course at more than 60.0% of the Loan Parties' stores for a period of more than 30 consecutive days (other than to the extent such suspension is a direct result of (i) the COVID-19 pandemic or governmental or court orders issued in connection therewith; provided that, solely in the case of this clause (i), such suspension occurs prior to the first anniversary of the Closing Date, or (ii) war, riot, civil insurrection, or natural disaster (e.g., tornadoes or earthquakes), in each case, to the extent the

consequences of such events or circumstances are not having a disproportionate impact on the Borrower and its Subsidiaries (taken as a whole) when compared to other similarly situated companies), liquidate all or a material portion of their assets or store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of their business; or

(n) a material breach by the Borrower of any of its material obligations under the Plan of Reorganization or any material agreement contemplated thereby, including with respect to its obligations to the holders of Allowed General Unsecured Claims, which breach remains unremedied for a period of thirty (30) days.

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, upon notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate, reduce or condition any Revolver Commitment, or make any adjustment to the Borrowing Base, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding, (iii) require the Loan Parties to Cash Collateralize LC Obligations at 105% of the Stated Amount thereof, and, if the Loan 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 Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in Section 4.02 are satisfied); and with respect to any event described in paragraph (h) or (i) above, the Revolver Commitments shall automatically terminate, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 7.02 Allocation. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, monies to be applied to the Secured Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, expenses (including extraordinary expenses) and other amounts, owing to the Administrative Agent or any Issuing Bank, in its capacity as such;

(b) second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders, ratably among them in proportion to the amounts described in this clause second payable to them;

(c) third, to the extent not previously reimbursed by the Borrower, to payment to the Lenders of that portion of the Obligations constituting principal and accrued and unpaid interest on any Overadvance Loans and Protective Advances, ratably among the Lenders in proportion to the amounts described in this clause third payable to them;

(d) fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans (other than Overadvance Loans and Protective Advances), LC Obligations and other Obligations, and fees (including Letter of Credit Fees), ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause fourth payable to them;

(e) fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than Overadvance Loans and Protective Advances) and LC Obligations, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause fifth held by them;

(f) sixth, to the Administrative Agent for the account of the Issuing Banks, to Cash Collateralize LC Obligations at 105% of the Stated Amount thereof;

(g) seventh, to the payment of (i) all Secured Bank Product Obligations (other than Secured Bank Product Obligations owing in respect of Bank Products described in clauses (c) and (e) of the definition of "Bank Product") and (ii) all Secured Swap Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause seventh held by them, in each case, up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.23;

(h) eighth, ratably to the payment of (i) all Secured Bank Product Obligations (including all Secured Bank Product Obligations owing in respect of Bank Products described in clauses (c) and (e) of the definition of "Bank Product") and (ii) all Secured Swap Obligations, in each case, to the extent not paid pursuant to clause seventh above, ratably among the Secured Parties in proportion to the respective amounts described in this clause eighth held by them; and

(i) last, the balance, if any, after all of the Obligations have been paid in full, to the Loan Parties or as otherwise required by Applicable Law.

Amounts shall be applied to each category of Secured Obligations set forth above until such Secured Obligations are paid in full or cash collateralized, as applicable and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Secured Obligations in the category. Amounts distributed to any Secured Party with respect to any Secured Bank Product Obligations and Secured Swap Obligations pursuant to clause seventh above shall be the lesser of the maximum Secured Bank Product Obligations or Secured Swap Obligations, as applicable, last reported to the Administrative Agent by such Secured Party with respect thereto or the actual Secured Bank Product Obligations or Secured Swap Obligations, as applicable, 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 or Secured Swap Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero. The allocations set forth in this Section 7.02 are solely to determine the rights and priorities of the Administrative Agent and the Secured Parties as among themselves, and may, except as set forth in the next sentence, be changed by agreement among them without the consent of any Loan Party. It is understood and agreed that (i) no Secured Bank Product Obligations or Secured Swap Agreement Obligations (in each case other than Noticed Bank Products or Noticed Swap Agreements) shall be paid pursuant to this Section 7.02 ahead of any other Obligations and (ii) no Cash Collateralization of LC Obligations shall be paid prior to any fees, interest or amounts due to the Issuing Banks or the Administrative Agent, in each case, unless consented to by the Borrower.

ARTICLE VIII

The Agents

Section 8.01 Appointment, Authority and Duties of the Administrative Agent.

(a) Appointment and Authority. Each Secured Party hereby irrevocably appoints and designates J.P. Morgan as the Administrative Agent under all Loan Documents and J.P. Morgan hereby accepts such appointments. The Administrative Agent may, and each Secured Party authorizes the Administrative Agent to, enter into all Loan Documents to which the Administrative Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by the Administrative Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by the Administrative Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as the Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from

any Loan Party or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. No Secured Party shall have any right individually to take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Administrative Agent shall be ministerial and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. The Administrative Agent alone shall be authorized to determine whether any Accounts, Credit Card Receivables or Inventory constitute Eligible Credit Card Receivables, Eligible Inventory or Eligible In-Transit Inventory, whether to impose or release any Availability Reserve, or whether any conditions to funding or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate the Administrative Agent from liability to any Lender or other Person for any error in judgment.

(b) Duties. The Administrative Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon the Administrative Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement.

(c) Agent Professionals. The Administrative Agent may perform its duties through agents and employees. The Administrative Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional.

(d) Instructions of Required Lenders. The rights and remedies conferred upon the Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. The Administrative Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by the Administrative Agent in connection with any act. The Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific Lenders or Secured Parties shall be required to the extent provided in Section 9.08(b). In no event shall the Administrative Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

Section 8.02 Agreements Regarding Collateral and Field Examination Reports.

(a) Possession of Collateral. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(b) Reports. Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and

strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.03 Reliance By the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall not incur any liability in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals. The Administrative Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any such delay in acting.

Section 8.04 Action Upon Default. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Article IV, unless it has received written notice from the Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify the Administrative Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except with the written consent of the Required Lenders, it will not take any Enforcement Action, accelerate Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

Section 8.05 Payments Received by Defaulting Lender. If a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to the Administrative Agent for application under Section 2.21 and it shall provide a written statement to the Administrative Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against any Collateral Deposit Account without the prior consent of the Administrative Agent.

Section 8.06 Limitation on Responsibilities of the Agents. The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.05 unless and until written notice thereof stating that it is a "notice under Section 5.05" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral.

Section 8.07 Successor Administrative Agent and Co-Agents.

(a) Resignation; Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and the Borrower. Upon receipt of such notice, Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Administrative Agent which shall be (i) (A) a Lender or an Affiliate of a Lender; or (B) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least $1,000,000,000 and

(ii) provided that no Event of Default exists under Sections 7.01(b), 7.01(h) and 7.01(i) (with respect to the Borrower only), subject to the approval of the Borrower. If no successor agent is appointed prior to the date that is 30 days from the effective date of the resignation of the Administrative Agent, then the Administrative Agent may appoint a successor agent from among the Lenders or, if no Lender accepts such role, the Administrative Agent may appoint Required Lenders as successor Administrative Agent. Upon acceptance by a successor Administrative Agent of an appointment to serve as the Administrative Agent hereunder, or upon appointment of Required Lenders as successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in Section 8.15. Notwithstanding any Administrative Agent's resignation, the provisions of this Section 8.07 shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while the Administrative Agent. Any successor to J.P. Morgan by merger or acquisition of stock or this loan shall continue to be the Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

(b) Separate Collateral Administrative Agent. It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If the Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, the Administrative Agent may appoint, subject to the approval of the Borrower (such approval not to be unreasonably withheld or delayed), an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If the Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to the Administrative Agent under the Loan Documents shall also be vested in such separate agent. The parties acknowledge that any Term Loan Agent may be acting as collateral agent for the Administrative Agent and the Lenders with respect to Real Property, equipment and other Term Loan Priority Collateral and, to such extent, the Administrative Agent hereby appoints the Term Loan Agent to act in such capacity. Secured Parties shall execute and deliver such documents as the Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by the Administrative Agent until appointment of a new agent.

Section 8.08 Acknowledgements of Lenders and Issuing Banks.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Acceptance or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date or the effective date of any such Assignment and Acceptance or any other Loan Document pursuant to which it shall have become a Lender hereunder.

Section 8.09 Remittance of Payments and Collections.

(a) Remittances Generally. All payments by any Lender to the Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified, payment shall be made by Lender not later than 2:00 p.m. (Local Time) on such day. Payment by the Administrative Agent to any Secured Party shall be made by wire transfer, in the type of funds received by the Administrative Agent. Any such payment shall be subject to the Administrative Agent's right of offset for any amounts due from such payee under the Loan Documents.

(b) Failure to Pay. If any Secured Party fails to pay any amount when due by it to the Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by the Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrower be entitled to receive credit for any interest paid by a Secured Party to the Administrative Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by the Administrative Agent pursuant to Section 2.21.

(c) Recovery of Payments. If the Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by the Administrative Agent from a Loan Party and such related payment is not received, then the Administrative Agent may recover such amount from each Secured Party that received it. If the Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, the Administrative Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by the Administrative Agent to any Secured Obligations are later required to be returned by the Administrative Agent pursuant to Applicable Law, each Lender shall pay to the Administrative Agent, on demand, such Lender's Pro Rata share of the amounts required to be returned.

Section 8.10 The Administrative Agent in its Individual Capacity. As a Lender, J.P. Morgan shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include J.P. Morgan in its capacity as a Lender. J.P. Morgan and its Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Loan Parties and their Affiliates, as if J.P. Morgan were not the Administrative Agent hereunder, without any duty to account therefor to the Lenders. In their individual capacities, J.P. Morgan and its Affiliates may receive information regarding Loan Parties, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Secured Party agrees that J.P. Morgan and its Affiliates shall be under no obligation to provide such information to any Secured Party, if acquired in such individual capacity.

Section 8.11 Administrative Agent Titles. Each Lender, other than J.P. Morgan, that is designated (on the cover page of this Agreement or otherwise) by J.P. Morgan as an "Agent" or "Arranger" of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders in their capacity as such, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

Section 8.12 Bank Product Providers. Each Secured Bank Product Provider and Secured Swap Provider, by delivery of a notice to the Administrative Agent of a Bank Product or Swap Agreement, agrees to be bound by this Article VIII. Each Secured Bank Product Provider and each Secured Swap Provider shall indemnify and hold harmless the Agent Indemnitees, to the extent not reimbursed by Loan Parties, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations and/or Secured Swap Obligations, as applicable.

Section 8.13 Survival. This Article VIII shall survive Payment in Full of the Obligations. Other than Sections 8.01, 8.04 and 8.07, this Article VIII does not confer any rights or benefits upon Borrower or any other Person. As between Borrower and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

Section 8.14 Withholding Tax. To the extent required by any Applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.17, each Lender shall indemnify and hold harmless the Administrative Agent against, within 10 days after written demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of 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). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 8.14. The agreements in this Section 8.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Revolver Commitments and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, for purposes of this Section 8.14, the term "Lender" includes any Issuing Bank.

Section 8.15 Indemnification. The Lenders agree to indemnify each Agent and each Lead Arranger in its capacity as such (to the extent not reimbursed by Holdings or the Borrower and without limiting the obligation of Holdings or the Borrower to do so), each in an amount equal to its pro rata share (based on its Revolver Commitments hereunder (or if such Revolver Commitments shall have expired or been terminated, in accordance with the respective principal amounts of its applicable outstanding Loans or participations in LC Disbursements, as applicable)) thereof, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent or Lead Arranger in any way relating to or arising out of, the Revolver Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent or Lead Arranger under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's or Lead Arranger's gross negligence or willful misconduct. The agreements in this Section 8.15 shall survive the payment of the Loans and all other amounts payable hereunder.

Section 8.16 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 Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) 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 Revolver 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 Revolver 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 Revolver Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolver

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 Revolver 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 Loan 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 Revolver Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 8.17 Flood Insurance Laws. The Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated lenders under Flood Insurance Laws. The Administrative Agent will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Insurance Laws. However, the Administrative Agent reminds each Lender and Participant in the facility that, pursuant to the Flood Insurance Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous

Section 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission, (including by ".pdf" or ".tif") pursuant to the terms of this Agreement, as follows:

(i) if to any Loan Party, to Tuesday Morning, Inc., 6250 LBJ Freeway, Dallas, Texas 75240, Attention: Stacie Shirley, Telecopier: (972) 934-7231, Electronic Address: sshirley@tuesdaymorning.com, with a copy to Tuesday Morning, Inc., 6250 LBJ Freeway, Dallas, Texas 75240, Attention: Steven R. Becker, Electronic Address: sbecker@tuesdaymorning.com, with a copy to Haynes and Boone, LLP, 2323 Victory Ave., Suite 700, Dallas, Texas 75219, Attention: Ian Peck, Electronic Address: ian.peck@haynesboone.com;

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., 2200 Ross Avenue, 9th Floor, TX1-2921, Dallas, TX 75201, Attention: Jon Eckhouse, Telecopier: (214) 965-2594, Electronic Address: jon.eckhouse@jpmorgan.com, with a copy to Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3900, Attention: Christopher Dawe, Electronic Address: cdawe@velaw.com;

(iii) if to an Issuing Bank, to it at the address, fax number or electronic address set forth separately in writing; or

(iv) if to a Lender, to it at the address, fax number or electronic address set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto.

(b) Notices and other communications to the Borrower, any Loan Party, the Lenders and the Issuing Banks hereunder may be delivered or furnished by Electronic Systems or other electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or other electronic communications pursuant to procedures approved by it; provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service, sent by fax or (to the extent permitted by paragraph (b) above) electronic means or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01.

(d) Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Survival of Agreement. All representations and warranties made by the Loan Parties herein and in the other Loan Documents shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, and shall continue in full force and effect until the Revolver Termination Date. Without prejudice to the survival of any other agreements contained herein, obligations for Taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities contained herein (including pursuant to Sections 2.15, 2.17 and 9.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit, and the termination of the Revolver Commitments or this Agreement, limited in the manner set forth herein.

Section 9.03 Binding Effect; Effectiveness. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, each Issuing Bank, the Administrative Agent and each Lender and their respective permitted successors and assigns.

Section 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) except as otherwise permitted by Section 6.05 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in clause (c) below, any Lender may assign to one (1) or more Eligible Assignees (other than to any natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolver Commitments and the Loans at the time owing to it) (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable

Loan and any related Revolver Commitment) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(i) the Borrower, provided that no consent of the Borrower shall be required (i) if an Event of Default has occurred and is continuing and (ii) if such assignment is to a Lender, an Affiliate of a Lender or a Related Fund in respect of a Lender;

(ii) the Administrative Agent, provided that no consent of the Administrative Agent shall be required if such assignment is to a Lender, an Affiliate of a Lender or a Related Fund in respect of a Lender; and

(iii) each Issuing Bank, provided that no consent of an Issuing Bank shall be required unless such assignment increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding).

(c) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an affiliate of a Lender or Related Fund or an assignment of the entire remaining amount of the assigning Lender's Revolver Commitments or Loans, the amount of the Revolver Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5.0 million, unless each of the Borrower and the Administrative Agent otherwise consent, provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Related Funds, if any;

(ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance together with a processing and recordation fee of $3,500; and

(iii) the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable tax forms.

(d) Subject to acceptance and recording thereof pursuant to clause (f) below and subject to clause (k) below, from and after the effective date specified in each Assignment and Acceptance the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05 as well as any Fees accrued for its account and not yet paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 (g) of this Section 9.04.

(e) 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 Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolver Commitments of, and principal amount (and stated interest) of the Revolver Loans and the LC Obligations owing to, each Lender or Issuing Bank, as applicable, 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 may 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 Issuing Bank and any Lender (with respect to any entry related to such Lender's Loans), at any reasonable time and from time to time upon reasonable prior notice.

(f) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire (unless the Eligible Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (c)(ii) above and any applicable tax forms, and any written consent to such assignment required by clause (b) above, the Administrative Agent shall accept such Assignment and Acceptance and

record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (f).

(g) Any Lender may, without the consent of, or notice to, the Borrower, any Issuing Bank or the Administrative Agent, sell participations to one (1) or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolver Commitments and the Loans 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 pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that such agreement 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 directly affected thereby pursuant to Section 9.04(a)(i) or clauses (i) through (vi) of the first proviso to Section 9.08(b). Subject to paragraph (h) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations with respect thereto, including the requirements under Section 2.17(e) (it being understood that the documentation required under Section 2.17(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant shall be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Revolver Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Revolver Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Revolver Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(h) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(i) Any Lender may at any time, without the consent of or notice to the Administrative Agent or the Borrower, pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to a natural person) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee (including any Eligible Assignee) for such Lender as a party hereto.

(j) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(k) If any assignment or participation under this Section 9.04 is made (or attempted to be made) to the extent the Borrower's consent is required under the terms of this Section 9.04, to any other Person without the Borrower's consent, then the

Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (A) terminate the Revolver Commitments of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender or participant as of such termination date (in the case of any participation in any Loan, to be applied to such participation), or (B) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the lesser of par or the amount such Lender paid for such Loans and participations in LC Disbursements and Protective Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (ii) the Borrower shall be liable to such Lender under Section 2.16 if any Eurodollar Loan owing to such Lender is repaid or purchased other than on the last day of the Interest Period relating thereto, and (iii) such assignment shall otherwise comply with this Section 9.04 (provided that no registration and processing fee referred to in this Section 9.04 shall be owing in connection with any assignment pursuant to this paragraph). Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender, as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder to an assignee as contemplated hereby in the circumstances contemplated by this Section 9.04(k). Nothing in this Section 9.04(k) shall be deemed to prejudice any rights or remedies the Borrower may otherwise have at law or equity.

Section 9.05 Expenses; Indemnity.

(a) The Borrower agrees to pay within thirty (30) days of demand thereof (together with backup documentation supporting such request) (i) all reasonable and documented (in summary format) out-of-pocket expenses (including Other Taxes) incurred by the Agents and Lead Arranger in connection with the preparation of this Agreement and the other Loan Documents, or by the Agents and Lead Arranger in connection with the syndication of the Revolver Commitments or the administration of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower and the reasonable and documented (in summary format) out-of-pocket fees, disbursements and charges for no more than one (1) outside counsel and, if necessary one (1) local counsel in each material jurisdiction where Collateral is located for such Persons, taken as a whole) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby contemplated shall be consummated) and (ii) all reasonable and documented out-of-pocket expenses incurred by the Agents or Lead Arranger or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made or the Letters of Credit issued hereunder (but limited, in the case of legal fees and expenses, to the actual reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of Vinson & Elkins LLP, counsel for the Administrative Agent and the Lead Arranger, and, if reasonably necessary (x) the reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of one (1) local counsel per relevant local jurisdiction and (y) in the case of an actual or potential conflict of interest, the reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of one (1) additional counsel to all affected Persons, taken as a whole).

(b) The Borrower agrees to indemnify, on a joint and several basis, the Administrative Agent, the Lead Arranger, each Issuing Bank, each Lender and each of their respective Related Parties, successors and assigns and the directors, trustees, officers, employees, advisors, controlling Persons and agents of each of the foregoing (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented (in summary format) out-of-pocket costs and related expenses (including reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of Vinson & Elkins LLP and, if necessary, one (1) local counsel in each relevant local jurisdiction to the Agents or Lead Arranger, taken as a whole, in each relevant jurisdiction, in the case of an actual or potential conflict of interest, and one (1) additional counsel to all affected Indemnitees, taken as a whole) incurred by or asserted against any Indemnitee arising out of, relating to, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions (including the payment of the Transaction Costs) and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or the use of any Letter of Credit or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or costs or related expenses (x) are determined by a judgment of a court of competent jurisdiction to have resulted by reason of the gross negligence, bad faith or willful misconduct of, or material breach by, such Indemnitee, (y) arise out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties)

against another Indemnitee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Administrative Agent, acting in its capacity as Administrative Agent) that does not involve any act or omission of the Borrower or any of its Subsidiaries and arises out of disputes among the Lenders and/or their transferees. The Borrower shall not be liable for any settlement of any proceeding referred to in this Section 9.05 effected without the Borrower's written consent (such consent not to be unreasonably withheld or delayed); provided, however, that the Borrower shall indemnify the Indemnitees from and against any loss or liability by reason of such settlement if the Borrower was offered the right to assume the defense of such proceeding and did not assume such defense or such proceeding was settled with the written consent of the Borrower, subject to, in each case, the Borrower's right in this Section 9.05 to claim an exemption from such indemnity obligations. The Borrower shall indemnify the Indemnitees from and against any final judgment for the plaintiff in any proceeding referred to in this Section 9.05, subject to the Borrower's right in this Section 9.05 to claim an exemption from such indemnity obligations. The Borrower shall not, without the prior written consent of any Indemnitee, effect any settlement of any pending or threatened proceeding in respect of which such Indemnitee is a party and indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee (and its Related Parties) from all liability or claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnitee (or its Related Parties). To the extent permitted by Applicable Law, each party hereto hereby waives for itself (and, in the case of the Borrower, for each other Loan Party) any claim against any Loan Party, any Lender, any Administrative Agent, any Lender Party, any Lead Arranger, and their respective affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto (and in the case of the Borrower on behalf of each other Loan Party) hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this sentence shall limit the Borrower's indemnity obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim in connection with which such indemnified Person is entitled to indemnification hereunder. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the termination of the Revolver Commitments, the expiration of any Letters of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Issuing Bank or any Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to Section 2.17, this Section 9.05 shall not apply to Taxes other than Taxes arising from a non-Tax claim.

(d) Notwithstanding the foregoing paragraphs in this Section 9.05, if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action, proceeding or investigation that any loss, claim, damage, liability or cost or related expense of any Indemnitee has resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee (or any of its Related Parties) or a material breach of the Loan Documents by such Indemnitee (or any of its Related Parties), such Indemnitee will repay such portion of the reimbursed amounts previously paid to such Indemnitee under this Section 9.05 that is attributable to expenses incurred in relation to the set or omission of such Indemnitee which is the subject of such finding.

(e) To the extent permitted by Applicable Law, neither the Borrower nor any Loan Party shall assert, and the Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Syndication Agent, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet).

Section 9.06 Right of Set-off. If an Event of Default shall have occurred and be continuing, upon the written consent of the Administrative Agent or the Required Lenders, each Lender and each Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Issuing Bank to or for the credit or the account of Holdings, the Borrower or any Subsidiary Guarantor (and such Lender or Issuing Bank will provide prompt notice to such Loan Party) against any of and all the obligations of Holdings or the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender and each Issuing Bank under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender or such Issuing Bank may have. Notwithstanding the foregoing, no amounts set off from any Loan Party shall be applied to Excluded Swap Obligations of such Loan Party.

Section 9.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS MOST RECENTLY PUBLISHED AND IN EFFECT, ON THE DATE SUCH LETTER OF CREDIT WAS ISSUED, BY THE INTERNATIONAL CHAMBER OF COMMERCE (THE "UNIFORM CUSTOMS") AND, AS TO MATTERS NOT GOVERNED BY THE UNIFORM CUSTOMS, THE LAWS OF THE STATE OF NEW YORK.

Section 9.08 Waivers; Amendment.

(a) No failure or delay of the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in (x) Section 2.22 with respect to any Revolver Commitment Increase, (y) the definition of Letter of Credit Increase Event with respect to amendments to Schedule 2.01B and (z) Section 2.14(e) with respect to the implementation of any Benchmark Replacement Conforming Changes, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (A) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders and (B) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders; provided, however, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity date of, or decrease the rate of interest on, any Loan or any LC Disbursement, or extend the stated expiration of any Letter of Credit beyond the Revolver Termination Date, without the prior written consent of each Lender directly and adversely affected thereby; provided, that (x) consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (i), (y) any amendment to the Consolidated Fixed Charge Coverage Ratio or the component definitions thereof shall not constitute a reduction in the rate of interest for purposes of this clause (i) and (z) that waiver or reduction of a post-default increase in interest shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender),

(ii) increase the Revolver Commitment of any Lender (other than with respect to any Revolver Commitment Increase to which such Lender has agreed) without the prior written consent of such affected 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 Revolver Commitments shall not constitute an increase of the Revolver Commitments of any Lender),

(iii) extend the Revolver Commitment of any Lender or decrease the Unused Line Fees or Issuing Bank Fees without the prior written consent of such Lender or Issuing Bank, as applicable (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default, mandatory prepayments or of a mandatory reduction in the aggregate Revolver Commitments shall not constitute an increase or extension of maturity); provided, that (x) consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (iii) and (y) any amendment to the Consolidated Fixed Charge Coverage Ratio or the component definitions thereof shall not constitute a reduction in the Unused Line Fees for purposes of this clause (iii),

(iv) except to the extent necessary to give effect to the express intentions of this Agreement (including Sections 2.22 and 9.04), which, in respect of any amendment or modification to effect such express intentions, shall be effective with the consent of the Required Lenders, amend or modify the provisions of Section 2.18(b) or (c) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender,

(v) amend or modify the provisions of Section 7.02, Sections 9.08(a), (b) or (c) or reduce the voting percentage set forth in the definition of "Required Lenders" or "Supermajority Lenders," without the prior written consent of each Lender directly and adversely affected thereby (it being understood that any Revolver Commitment Increase and additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Revolver Loans and Revolver Commitments are included on the Closing Date),

(vi) (x) release all or substantially all the Collateral (it being understood that a transaction permitted under Section 6.05 shall not constitute a release of all or substantially all of the Collateral), or release all or substantially all of the value of the Guarantees (except as otherwise permitted herein (including in connection with a transaction permitted under Section 6.05) or in the other Loan Documents) under the Collateral Agreement, unless, in the case of a Subsidiary Guarantor, all or substantially all the Equity Interests of such Subsidiary Guarantor is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender or (y) subordinate the Liens of the Administrative Agent under the Security Documents with respect to Collateral at that time included in the Borrowing Base and/or all or substantially all of the Collateral (other than, in each case, in respect of Term Loan Priority Collateral in accordance with the provisions of the Loan Documents as in effect on the date hereof or pursuant to Section 9.17) or subordinate the Obligations hereunder, without the prior written consent of each Lender,

(vii) without the prior written consent of the Supermajority Lenders, change the definition of the terms "Availability" or "Borrowing Base" or any component definition used therein (including, without limitation, the definitions of "Eligible Credit Card Receivables," "Eligible Inventory," and "Eligible In-Transit Inventory") if, as a result thereof, the amounts available to be borrowed by the Borrower would be increased; provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Availability Reserve or to add Accounts and Inventory acquired in a Permitted Business Acquisition to the Borrowing Base as provided herein, or

(viii) without the prior written consent of the Supermajority Lenders, increase the percentages and advance rates set forth in the term "Borrowing Base" or add any new classes of eligible assets thereto, provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, an Issuing Bank hereunder without the prior written consent of the Administrative Agent, such Issuing Bank acting as such at the effective date of such agreement. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any successor or assignee of such Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Revolver Commitments of such Lender may not be increased or extended without the consent of such Lender and (y) the principal and accrued and unpaid interest of such Lender's Loans shall not be reduced or forgiven without the consent of such Lender.

(c) Without the consent of the Syndication Agents or Lead Arranger or Lender or Issuing Bank, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan 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 Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with Applicable Law.

(d) Notwithstanding anything to the contrary contained in this Section 9.08 or any Loan Document, (i) the Borrower and the Administrative Agent may, without the input or consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower and the Administrative Agent to effect the provisions of Section 2.22, (ii) if the Administrative Agent and the Borrower have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and (iii) guarantees, collateral security documents and related documents executed by Holdings or Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented or waived without the consent of any Lender if such amendment, supplement or waiver is delivered in order to (x) comply with local law or advice of local counsel, (y) cure ambiguities, omissions, mistakes or defects or (z) cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate on any Loan or participation in any LC Disbursement, together with all fees and charges that are treated as interest under Applicable Law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender or any Issuing Bank shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with Applicable Law, the rate of interest payable hereunder, together with all Charges payable to such Lender or such Issuing Bank shall be limited to the Maximum Rate, provided that such excess amount shall be paid to such Lender or such Issuing Bank on subsequent payment dates to the extent not exceeding the legal limitation.

Section 9.10 Entire Agreement. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto, and their respective successors and assigns permitted hereunder, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 9.11 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS

OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 9.12 Severability. In the event any one (1) or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13 Counterparts; Electronic Execution.

(a) This Agreement may be executed in multiple counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which, when taken together, shall constitute but one (1) contract, and shall become effective as provided in **Section 9.03**.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document, any assignment, and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender Party for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.15 Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Lender, the Administrative Agent or any Issuing Bank may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against Holdings, the Borrower or any Loan Party or their properties in the courts of any jurisdiction.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each of the parties hereto agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested at its address provided in Section 9.01 agrees that service as so provided in is sufficient to confer personal jurisdiction over the applicable credit party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and agrees that agents and lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any credit party in the courts of any other jurisdiction.

Section 9.16 Confidentiality. Each of the Lenders, each Issuing Bank and each of the Agents agrees that it shall maintain in confidence any information relating to Holdings, the Borrower and the other Loan Parties furnished to it by or on behalf of Holdings, the Borrower or the other Loan Parties (other than information that (a) has become generally available to the public other than as a result of a disclosure by any such party, (b) was already in possession on a non-confidential basis for a person not known to the recipient to be bound by confidentiality obligations to Parent or any Subsidiary thereof or has been independently developed by such Lender, such Issuing Bank or such Agent without violating this Section 9.16 or relying on any such information, (c) was available to such Lender, such Issuing Bank or such Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Revolver Loans on behalf of such Lender (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 9.16 and such Lender, such Issuing Bank and such Agent shall be responsible for its Affiliates' compliance with this Section except to the extent such Affiliate shall sign a written confidentiality agreement in favor of the Borrower), except: (i) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, self-regulatory authorities (including the National Association of Insurance Commissioners) or of any securities exchange on which securities of the disclosing party or any affiliate of the disclosing party are listed or traded (in which case such Lender, such Issuing Bank or such Agent will promptly notify the Borrower, in advance, to the extent permitted by Applicable Law or the rules governing the process requiring such disclosure (except with respect to any routine or ordinary course audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority) and shall use its commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (ii) as part of the reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (iii) to its parent companies, affiliates, auditors, assignees, transferees and participants (so long as each such Person shall have been instructed to keep the same confidential in accordance with provisions not less restrictive than this Section 9.16 and such Lender, such Issuing Bank and such Agent shall be responsible for its Affiliates' compliance with this Section), (iv) in order to enforce its rights under any Loan Document

in a legal proceeding (in which case it shall use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (v) to any pledgee under Section 9.04(d) or any other existing or prospective assignee of, or existing or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 9.16 or other provisions at least as restrictive as this Section 9.16), (vi) to any direct or indirect contractual counterparty in Swap Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16), and (vii) with the consent of the Borrower. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents and any Swap Agreement to which a Lender Party is a party.

Section 9.17 Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, assigns, transfers or otherwise disposes of any assets or all of the Equity Interests of any Subsidiary Guarantor to a Person that is not (and is not required to become) a Loan Party in each case in a transaction expressly permitted by Section 6.05, the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower's expense to release any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of all of the Equity Interests of any Subsidiary Guarantor in a transaction expressly permitted by Section 6.05, terminate such Subsidiary Guarantor's obligations under its Guarantee. Any representation, warranty or covenant contained in any Loan Document relating to any such Equity Interests, asset or subsidiary of Holdings shall no longer be deemed to be made once such Equity Interests or asset is so conveyed, sold, leased, assigned, transferred or disposed of. At the request of the Borrower, the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) (i) subordinate any Lien granted to the Administrative Agent (or any sub-agent or collateral agent) under any Loan Document to the holder of any Lien on such property that is permitted by Sections 6.02(c) (solely in the case of Liens securing Capital Lease Obligations and purchase money Indebtedness), (i), (j), and (aa) and (ii) enter into intercreditor arrangements contemplated by (or amendments to the Security Documents to effect the arrangement contemplated by) Sections 6.01(g), (j) and (y), Sections 6.02(b), (c) and (y), and the definition of "Permitted Refinancing Indebtedness."

Section 9.18 USA PATRIOT Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA PATRIOT Act.

Section 9.19 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or any Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause for any reason, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred. The provisions of this Section 9.19 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 9.19 shall survive the termination of this Agreement.

Section 9.20 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Revolver Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 9.21 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap 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 Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.22 Acknowledgements. Each Loan Party hereby acknowledges and agrees that (a) no fiduciary, advisory or agency relationship between the Loan Parties and the Lender Parties is intended to be or has been created in respect of any of the transactions contemplated by this Agreement or the other Loan Documents, irrespective of whether the Lender Parties have advised or are advising the Loan Parties on other matters, and the relationship between the Lender Parties, on the one hand, and the Loan Parties, on the other hand, in connection herewith and therewith is solely that of creditor and debtor, (b) the Lender Parties, on the one hand, and the Loan Parties, on the other hand, have an arm's length business relationship that does not directly or indirectly give rise to, nor do the Loan Parties rely on, any fiduciary duty to the Loan Parties or their affiliates on the part of the Lender Parties, (c) the Loan Parties are capable of evaluating and understanding, and the Loan Parties understand and accept, the terms, risks and conditions of the transactions contemplated by this Agreement and the other Loan Documents, (d) the Loan Parties have been advised that the Lender Parties are engaged in a broad range of transactions that may involve interests that differ from the Loan Parties' interests and that the Lender Parties have no obligation to disclose such interests and transactions to the Loan Parties, (e) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent the Loan Parties have deemed appropriate in the negotiation, execution and delivery of this Agreement and the other Loan Documents, (f) each Lender Party has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by it and the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, any of their affiliates or any other Person, (g) none of the Lender Parties has any obligation to the Loan Parties or their affiliates with respect to the transactions contemplated by this Agreement or the other Loan Documents except those obligations expressly set forth herein or therein or in any other express writing executed and delivered by such Lender Party and the Loan Parties or any such affiliate and (h) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lender Parties or among the Loan Parties and the Lender Parties.

Section 9.23 Lender Action. Notwithstanding anything to the contrary contained herein or in any other Loan Document, (i) the authority to enforce rights and remedies hereunder and under the other Security Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent for the benefit of the Lenders and the Issuing Banks, (ii) no Secured Party shall have any right individually to realize upon any of the Collateral under any Security Document or to enforce the Guarantee, it being understood and agreed that all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof and (iii) in the event of a foreclosure by the Administrative Agent

on any of the Collateral pursuant to a public or private sale, the Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold in any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale.

Section 9.24 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable Law).

Section 9.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or Issuing Bank that is an Affected Financial Institution arising under any Loan Document 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 Lender or Issuing Bank 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 entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 9.26 Intercreditor Agreement.

(a) This Agreement and the other Loan Documents are subject to the terms and conditions set forth in the Intercreditor Agreement in all respects and, in the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Administrative Agent or the Term Loan Agent, as applicable, pursuant to any Loan Document or Term Loan Document, and the exercise of any right or remedy in respect of the Collateral by the Administrative Agent or the Term Loan Agent, as applicable hereunder, under any other Loan Document, or under the Term Loan Agreement and any other agreement entered into in connection therewith are subject to the provisions of the Intercreditor Agreement and in the event of any conflict between the terms of the Intercreditor Agreement,

this Agreement, any other Loan Document, the Term Loan Agreement and any other agreement entered into in connection therewith, the terms of the Intercreditor Agreement shall govern and control with respect to the exercise of any such right or remedy or the Loan Parties' covenants and obligations.

(b) Each Lender, in its capacity as a Lender and in its capacity as a Secured Swap Provider and/or a Secured Bank Product Provider, as applicable, and each other Secured Swap Provider and Secured Bank Product Provider by its acceptance of the benefits of the Security Documents creating Liens to secure the Secured Obligations, agrees that:

(i) acknowledges that it has received a copy of the Intercreditor Agreement and is satisfied with the terms and provisions thereof;

(ii) authorizes and instructs the Administrative Agent to (A) enter into the Intercreditor Agreement, as Administrative Agent and on behalf of such Lender, (B) exercise all of the Administrative Agent's rights and to comply with all of their respective obligations under the Intercreditor Agreement and to take all other actions necessary to carry out the provisions and intent thereof and (C) take actions on its behalf in accordance with the terms of the Intercreditor Agreement;

(iii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement as if it was a signatory thereto;

(iv) consents to the treatment of Liens to be provided for under the Intercreditor Agreement;

(v) authorizes and directs the Administrative Agent to execute and deliver, in each case on its behalf and without any further consent or authorization from it, any amendments, supplements or other modifications of the Intercreditor Agreement that the Borrower may from time to time request to give effect to any incurrence, amendment, or refinancing of any Indebtedness incurred pursuant to Section 6.01(j); provided that, any such amendments, supplements or modifications, other than those that are corrective, technical or conforming, shall require the consent of the Required Lenders; and

(vi) agrees that no such Lender, Secured Bank Product Provider, Secured Swap Provider or any other beneficiary of a Lien granted pursuant to a Security Document, shall have any right of action whatsoever against the Administrative Agent as a result of any action taken by the Administrative Agent pursuant to this Section 9.26(b) or in accordance with the terms of the Intercreditor Agreement.

The provisions of this Section 9.26(b) shall apply to each Issuing Bank, all Lenders, all Secured Swap Providers and all Secured Bank Products Providers and their respective successors and assigns. The provisions of this Section 9.26(b) are solely for the benefit of the Administrative Agent, the Issuing Banks, the Lenders, the Secured Swap Providers and the Secured Bank Product Providers, and neither the Holdings, the Borrower nor any Subsidiary thereof shall have rights as a third party beneficiary of any such provisions.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

TUESDAY MORNING, INC.
TUESDAY MORNING CORPORATION
TMI HOLDINGS, INC.

By: /s/ Steven R. Becker

Name: Steven R. Becker
Title: Chief Executive Officer and President

Signature Page to Credit Agreement

JPMORGAN CHASE BANK, N.A.,
as Lender and as Administrative Agent

By: /s/ Jon Eckhouse
Name: Jon Eckhouse
Title: Authorized Officer

Signature Page to Credit Agreement

WELLS FARGO BANK, N.A.,
as a Lender and as Syndication Agent

By: /s/ Jai Alexander
Name: Jai Alexander
Title: Director

Signature Page to Credit Agreement

BANK OF AMERICA, N.A.,
as a Lender and as Syndication Agent

By: /s/ Andrew Cerussi
Name: Andrew Cerussi
Title: Senior Vice President

Signature Page to Credit Agreement

Exhibit 10.2

Execution Version

CREDIT AGREEMENT

dated as of December 31, 2020,

among

TUESDAY MORNING CORPORATION,
as Holdings,

TUESDAY MORNING, INC.,

as Borrower,

THE LENDERS PARTY HERETO,

and

ALTER DOMUS (US) LLC,
as Administrative Agent

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CREDIT AGREEMENT dated as of December 31, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), among TUESDAY MORNING, INC., a Texas corporation (the "Borrower"), each of the Subsidiary Guarantors (as hereinafter defined), TUESDAY MORNING CORPORATION, a Delaware corporation ("Parent"), TMI HOLDINGS, INC., a Delaware corporation ("Intermediate Holdings"), the LENDERS party hereto from time to time and ALTER DOMUS (US) LLC, as administrative agent (in such capacity, the "Administrative Agent").

WHEREAS, on May 27, 2020 (the "Petition Date"), the Borrower and each of the Subsidiary Guarantors (as defined below) filed voluntary petitions with the Bankruptcy Court commencing their respective cases that are pending under Chapter 11 of the Bankruptcy Code (collectively, the "Cases"). In connection with the Cases, the Loan Parties, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto entered into that certain Senior Secured Super Priority Debtor-In-Possession Credit Agreement dated as of May 29, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "DIP ABL Credit Agreement");

WHEREAS, the Loan Parties filed the *Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation,* et al.*, Pursuant to Chapter 11 of the Bankruptcy Code*, dated November 18, 2020 (as amended, supplemented or otherwise modified from time to time, the "Plan of Reorganization") with the Bankruptcy Court, which Plan of Reorganization was confirmed by the Bankruptcy Court's order entered on December 23, 2020;

WHEREAS, the Borrower has requested that the Lenders extend exit financing in connection with the consummation of the Plan of Reorganization;

NOW THEREFORE, the Lenders are willing to extend such exit financing to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

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

"ABL Administrative Agent" shall mean the "Administrative Agent" as defined in the ABL Credit Agreement.

"ABL Credit Agreement" shall mean that certain Credit Agreement dated as of the Closing Date, by and among, *inter alios*, the Borrower, Parent, Intermediate Holdings, each of the Subsidiary Guarantors, JPMorgan Chase Bank, N.A., as a lender and in its capacity as "Administrative Agent", Bank of America, N.A., and Wells Fargo Bank, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time to the extent permitted under the Intercreditor Agreement.

"ABL Loan Documents" shall mean the "Loan Documents" as defined in the ABL Credit Agreement.

"ABL Loan Obligations" shall mean all "Secured Obligations" under the ABL Credit Agreement; provided that such Indebtedness is subject to the Intercreditor Agreement.

"ABL Priority Collateral" shall have the meaning assigned such term in the Intercreditor Agreement.

"ABL Priority Collateral Account" shall mean a Deposit Account subject to the sole dominion and control of the ABL Administrative Agent which holds solely identifiable proceeds of ABL Priority Collateral pending reinvestment or the application thereof to the ABL Loan Obligations in accordance with the ABL Loan Documents and the Intercreditor Agreement.

"ABL Secured Parties" shall mean the "Secured Parties" under the ABL Credit Agreement.

"Account" shall have the meaning as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

"Account Debtor" shall mean a Person who is obligated under an Account, Chattel Paper or General Intangible.

"Acquisition" shall mean, with respect to any Person, (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person (whether by merger or consolidation of such Person with any other Person or otherwise) or (b) a purchase or other acquisition of all or substantially all of the assets or properties of another Person or of any business unit of another Person (whether by merger or consolidation of such Person with any other Person or otherwise).

"Administrative Agent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Administrative Agent Fee Letter" shall mean the Fee Letter dated as of the Closing Date by and between the Borrower and the Administrative Agent.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form of Exhibit B.

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

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, neither the Administrative Agent nor any Lender shall be deemed to be an Affiliate of the Borrower or its Subsidiaries with respect to transactions evidenced by any Loan Document.

"Agent Indemnitees" shall mean the Administrative Agent and its officers, directors, employees, Affiliates, agents and attorneys.

"Agent Professionals" shall mean attorneys, accountants, appraisers, auditors, environmental engineers or consultants, and other professionals and experts retained by the Administrative Agent.

"Agreement" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Agreement Currency" has the meaning assigned to such term in Section 9.24.

"All Outstanding Equity Interests" shall mean, with respect to any Person, all of the outstanding Equity Interests (other than directors' qualifying shares and similar *de minimis* holdings required by Applicable Law) in such Person.

"Allowed General Unsecured Claims" shall have the meaning assigned to such term in the Plan of Reorganization.

"Ancillary Document" has the meaning assigned to it in Section 9.13(b).

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption, money laundering, any predicate crime to money laundering or any financial record keeping an reporting requirements related thereto.

"Applicable Law" shall mean all applicable laws, rules, regulations and binding governmental requirements having the force and effect of law applicable to the Person in question or any of its property or assets, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Borrower (if the Borrower's consent is required by this Agreement), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent.

"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).

"Bankruptcy Code" shall mean Title 11 of the United States Code or any similar federal or state law for the relief of debtors, as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Northern District of Texas, Dallas Division or any other court having jurisdiction over the Cases from time to time and any Federal appellate court thereof.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership or control 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 the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

"Borrower" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Borrowing" shall mean the funding of the Loans on the Closing Date.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03.

"Budget" shall have the meaning assigned to such term in Section 5.04(f).

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law or other governmental action to remain closed.

"Capital Expenditures" shall mean, in respect of any period, the aggregate of all expenditures incurred by the Borrower and the Subsidiaries during such period that, in accordance with GAAP, are required to be classified as capital expenditures, including Capital Lease Obligations incurred, provided, however, that Capital Expenditures for the Borrower and the Subsidiaries shall not include:

(a) expenditures of proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and the Subsidiaries within twelve (12) months of receipt of such proceeds,

(b) expenditures that are accounted for as capital expenditures of such Person and that actually have been paid for by a third party (other than the Borrower or any Subsidiary thereof) and for which neither the Borrower nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period, other than the payment of rent),

(c) the purchase price of equipment or property purchased during such period to the extent the consideration therefor consists of any combination of (x) used or surplus equipment or property traded in at the time of such purchase and (y) the proceeds of a reasonably concurrent sale of used or surplus equipment or property, in each case, in the ordinary course of business,

(d) expenditures that are accounted for as capital expenditures in connection with transactions constituting Permitted Business Acquisitions, or

(e) the interest component of any Capital Lease Obligation.

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

"Cases" shall have the meaning assigned such terms in the recitals to this Agreement.

"Cash Dominion Trigger Period" shall have the meaning given to such term in the ABL Credit Agreement as in effect on the date hereof.

"Casualty Event" shall mean any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Term Loan Priority Collateral.

"Change in Control" shall mean:

(a) a sale or other Disposition of all or substantially all of the assets of the Parent or any of its Subsidiaries or a sale of 100% of the Equity Interests of Intermediate Holdings or the Borrower, or

(b) any merger, consolidation or similar transaction upon which the outstanding Equity Interests of the Parent shall no longer be registered pursuant to the Exchange Act, or

(c) except as otherwise permitted by Section 6.05(b), the acquisition of record ownership or direct beneficial ownership (i.e., excluding indirect beneficial ownership through intermediate entities by any Person which is the subject of clause (c) below) by any Person other than Parent (or another Parent Entity that has become a Loan Party) of any Equity Interests in Intermediate Holdings, such that after giving effect thereto Parent (or another Parent Entity that has become a Loan Party) shall cease to beneficially own and control 100% of the Equity Interests of Intermediate Holdings, or

(d) the acquisition of record ownership or direct beneficial ownership (i.e., excluding indirect beneficial ownership through intermediate entities by any Person which is the subject of clause (c) below) by any Person other than Intermediate Holdings (or another Parent Entity that is or has become a Loan Party) of any Equity Interests in the Borrower, such that after giving effect thereto Intermediate Holdings (or another Parent Entity that is or has become a Loan Party) shall cease to beneficially own and control 100% of the Equity Interests of the Borrower

(e) the acquisition of beneficial ownership, directly or indirectly, by any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the date hereof), other than Osmium Partners LLC, Tensile Capital Management LLC and/or any affiliates of Osmium Partners LLC or Tensile Capital Management LLC, any employee benefit plan and/or Person acting as a trustee, agent or other fiduciary or administrator in respect thereof, of Equity Interests in the Parent representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Parent; or

(f) a Change in Control (or comparable event) as defined in the ABL Credit Agreement.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" shall have the meaning assigned to such term in Section 9.09.

"Chattel Paper" shall have the meaning set forth in Article 9 of the UCC.

"Claims" shall mean all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interests, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees) at any time (including after Payment in Full of the Obligations, resignation or replacement of the Administrative Agent or replacement of any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Loan Party or other Person, in any way relating to (a) any Loans, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted to be taken by an Indemnitee in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

"Closing Date" shall mean December 31, 2020.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean any and all assets subject or purported to be subject to a Lien pursuant to any Security Document, including all ABL Priority Collateral and Term Loan Priority Collateral.

"Collateral Agreement" shall mean the Guarantee and Collateral Agreement dated as of the Closing Date, among Holdings, the Borrower, each Subsidiary Guarantor and the Administrative Agent.

"Commitment" shall mean for any Lender, its obligation to make Loans up to the maximum principal amount shown on Schedule 2.01, as hereafter modified pursuant to an Assignment and Acceptance to which it is a party. "Commitments" shall mean the aggregate amount of such commitments of all Lenders.

"Commitment Letter" shall mean that certain Commitment Letter dated November 15, 2020 by and among the Borrower and Tensile Capital Management LLC.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), and any successor statute.

"Confirmation Order" shall mean the Order Confirming the Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et al., pursuant to Chapter 11 of the Bankruptcy Code Docket No. 1913 entered by the Bankruptcy Court on December 23, 2020.

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

"Contractual Obligation" shall mean, as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, written undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling" and "Controlled" shall have meanings correlative thereto.

"Control Agreement" shall mean an agreement that grants the Administrative Agent "control" within the meaning of Section 9-104 of the UCC in effect in the applicable jurisdiction over the applicable Deposit Account, commodity account or securities account, in form and substance reasonably satisfactory to the Administrative Agent.

"Cost" shall mean the lower of cost or market value of Inventory, determined in accordance with the accounting policies used in the preparation of the Borrower's audited financial statements (pursuant to which the retail method of accounting is utilized for substantially all merchandise Inventories), which policies are in effect on the Closing Date. "Cost" does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Borrower's calculation of cost of goods sold.

"Covered Entity" shall mean any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" shall have the meaning assigned to it in Section 9.21.

"Debt Incurrence Prepayment Event" shall mean any issuance or incurrence by the Holdings, Borrower or any of the Subsidiaries of any Indebtedness (excluding any Indebtedness permitted to be issued or incurred under Section 6.01) that occurs after the ABL Loan Obligations have been Paid in Full (as defined in the Intercreditor Agreement).

"Declined Proceeds" shall have the meaning assigned to such term in Section 2.11(b)(iv).

"Default" shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Default Rate" shall have the meaning assigned to such term in Section 2.13(d).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Deferred Net Cash Proceeds" shall have the meaning assigned such term in the definition of Net Cash Proceeds.

"Deferred Net Cash Proceeds Payment Date" shall have the meaning assigned such term in the definition of Net Cash Proceeds.

"Deposit Account" shall have the meaning assigned thereto in Article 9 of the UCC.

"DIP ABL Credit Agreement" shall have the meaning assigned such terms in the recitals to this Agreement.

"DIP RE Credit Agreement" shall mean that certain Senior Secured Super Priority Debtor-In-Possession Delayed Draw Term Loan Agreement dated as of July 10, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date), among the Borrower, Holdings, the other guarantors party thereto, the lenders party thereto, and Franchise Group, Inc., as administrative agent.

"Disposition" shall mean any sale, transfer, lease or other disposition (whether effected pursuant to a Division or otherwise) of assets. "Dispose" shall have a meaning correlative thereto.

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

"Division" shall mean 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.

"Dollars" or "$" shall mean lawful money of the United States of America.

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

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

"Electronic Signature" shall mean an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" shall mean any electronic system, including e-mail, e-fax, web portal access for the Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by any Person, providing for access to data protected by passcodes or other security system.

"Eligible Assignee" shall mean (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof) and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans.

"Enforcement Action" shall mean any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in a Loan Party's Insolvency Proceeding, or otherwise), in each case solely to the extent permitted by the Loan Documents.

"environment" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"Environmental Laws" shall mean all laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or actual or alleged exposure to, any Hazardous Materials or to occupational health and safety (to the extent relating to the environment or Hazardous Materials).

"Equity Interests" of any Person shall mean any and all shares, interests, 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 and any and all warrants, rights or options to purchase or other rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing (until so converted or exchanged).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor statute and the rules and regulations promulgated thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 (m) or (o) of the Code.

"ERISA Event" shall mean (a) any Reportable Event; (b) the existence with respect to any Loan Party, any ERISA Affiliate or any Plan of a non-exempt Prohibited Transaction; (c) the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA), applicable to such Plan, whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (e) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (f) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in Reorganization, or terminated (within the meaning of Section 4041A of ERISA); or (g) the failure by any Loan Party or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA.

"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 assigned to such term in Section 7.01.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

"Excluded Assets" shall have the meaning assigned to such term in Section 5.09(h).

"Excluded Deposit Accounts" shall mean (a) Deposit Accounts used specifically, solely and exclusively for Tax and Trust Funds, (b) any ABL Priority Collateral Account, (c) Deposit Accounts that do not have a daily balance at any time in excess of $250,000; provided that the aggregate amount of funds in all Deposit Accounts excluded under this clause (c) shall not exceed $1,000,000 and (d) the General Unsecured Cash Fund Deposit Account.

"Excluded Subsidiary" shall mean (a) any Subsidiary that is prohibited by law, regulation or Contractual Obligation in existence on the Closing Date and not entered into in contemplation of this Agreement from providing a Guarantee of the Obligations or that would require a governmental (including regulatory) consent, approval, license or authorization in order to provide such Guarantee, (b) any Subsidiary for which a Guarantee of the Obligations by such Subsidiary would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent (acting at the direction of the Required Lenders), (c) Tuesday Morning Cares, a Texas not-for-profit entity, and (d) any Subsidiary to the extent that the burden or cost of obtaining a Guarantee of the Obligations from such Subsidiary outweighs the benefit afforded thereby, as reasonably determined by the Administrative Agent (acting at the direction of the Required Lenders) and the Borrower; provided that, in no event shall any Subsidiary that guarantees the ABL Loan Obligations or any other Material Indebtedness constitute an "Excluded Subsidiary".

"Excluded Taxes" shall mean, with respect to any Lender Party or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by any jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes (other than engaging in a trade or business as a result of having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender making a Loan to the Borrower, any U.S. federal withholding tax that (x) is in effect under Applicable Law and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office) except to the extent that such Person (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to any U.S. federal withholding tax pursuant to Section 2.17(a) or Section 2.17(c) or (y) is attributable to such Lender's failure to comply with Section 2.17(e) with respect to such Loan unless such failure to comply with Section 2.17(e) is a result of a change in law after the date such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office), (d) any interest, additions to taxes or penalties with respect to the foregoing and (e) any withholding taxes imposed pursuant to FATCA.

"Existing Debt" shall mean the Indebtedness outstanding under the Prepetition Credit Agreement, the DIP ABL Credit Agreement and the DIP RE Credit Agreement.

"Fairness Opinion" shall have the meaning assigned to such term in Section 6.07(b)(x).

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

"Financial Officer" of any Person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

"FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"Fiscal Year" shall mean each 12-month period ending on June 30th.

"Flood Documentation" shall mean, with respect to each Mortgaged Property located in the United States or any territory thereof, (i) a completed "life-of-loan" Federal Emergency Management Agency standard flood hazard determination (together with a notice about Special Flood Hazard Area status and flood disaster assistance duly executed by the applicable Loan Party relating thereto) and (ii) a copy of, or a certificate as to coverage under, and a declaration page relating to, the insurance policies required by Section 5.02(b) hereof and the applicable provisions of the Security Documents, each of which shall (A) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable), (B) name the Administrative Agent, on behalf of the Secured Parties, as additional insured and loss payee/mortgagee and (C) identify the address of each property located in a Special Flood Hazard Area, the applicable flood zone designation and the flood insurance coverage and deductible relating thereto and (iii) be otherwise in form and substance reasonably satisfactory to the Administrative Agent and sufficient to comply with Flood Insurance Laws.

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statue thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and related legislation, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Foreign Benefit Arrangement" shall mean any employee benefit arrangement mandated by non-U.S. law that is maintained or contributed to by any Loan Party or any ERISA Affiliate.

"Foreign Lender" shall mean any Lender that is not a U.S. Person.

"Foreign Plan" shall mean each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by any Loan Party or any ERISA Affiliate.

"Foreign Plan Event" shall mean, with respect to any Foreign Benefit Arrangement or Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by Applicable Law or by the terms of such Foreign Benefit Arrangement or Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Benefit Arrangement or Foreign Plan required to be registered; or (c) the failure of any Foreign Benefit Arrangement or Foreign Plan to comply with any material provisions of Applicable Law and regulations or with the material terms of such Foreign Benefit Arrangement or Foreign Plan.

"Foreign Subsidiary" shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States.

"General Intangible" shall mean any "general intangible" as such term is defined in the UCC.

"General Unsecured Cash Fund" shall have the meaning assigned to such term in the Plan of Reorganization.

"General Unsecured Cash Fund Deposit Account" shall mean the Deposit Account of the Borrower maintained with Signature Bank in which the General Unsecured Cash Fund is deposited and maintained.

"General Unsecured Cash Fund Escrow Agreement" shall mean that certain Escrow Deposit Agreement, dated on or about the Closing Date, between Parent, Bankruptcy Management Solutions, Inc., and Signature Bank, in its capacity as escrow agent.

"Governmental Authority" shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body or any entity or officer exercising executive, legislative, judicial, regulatory or

administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Guarantee" of or by any Person (the "guarantor") shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (v) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation, or (b) any Lien on any assets of the guarantor securing any Indebtedness of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include (x) endorsements for collection or deposit, in either case in the ordinary course of business or (y) customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement. The amount of any Guarantee for purposes of clause (b) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"guarantor" shall have the meaning assigned to such term in the definition of the term "Guarantee."

"Guarantors" shall mean, collectively, Parent, Intermediate Holdings, the Subsidiary Guarantors and any other Loan Party (including the Borrower with respect to any Secured Obligations of another Loan Party).

"Hazardous Materials" shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents of any nature which are subject to regulation by any Governmental Authority or which would reasonably be likely to give rise to liability under any Environmental Law, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas.

"Holdings" shall mean a collective reference to Parent and Intermediate Holdings, or, if Intermediate Holdings ceases to exist, shall mean Parent.

"Indebtedness" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business and maturing within three hundred sixty-five (365) days after the incurrence thereof), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) all payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Swap Agreements net of payments such Person would receive in the event of early termination on such date of determination, (h) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and (i) the principal component of all obligations of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof. The Indebtedness of the Borrower and the Subsidiaries shall exclude (i) accrued expenses and accounts and trade payables, (ii) liabilities under vendor agreements to the extent such indebtedness may be satisfied through non-cash means such as purchase volume earnings credits and (iii) reserves for deferred income taxes. For the avoidance of doubt, "Indebtedness" shall not

include any amounts due or payable for the benefit of the holders of Allowed General Unsecured Claims in accordance with the Plan of Reorganization.

"Indemnified Taxes" shall mean (a) all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document other than Excluded Taxes, and (b) Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in Section 9.05(b).

"Insolvency Proceeding" shall mean any case or proceeding commenced by or against a Person under any state, federal, provincial, territorial or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, bankruptcy, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, monitor, trustee, liquidator, administrator, conservator, custodian or other similar Person for such Person or any part of its Property, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; or (c) an assignment for the benefit of creditors.

"Insolvent" with respect to any Multiemployer Plan, shall mean the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

"Intercreditor Agreement" shall mean that certain Intercreditor and Subordination Agreement dated the Closing Date by and among the Borrower, the Administrative Agent and the ABL Administrative Agent.

"Intermediate Holdings" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Investment" shall have the meaning assigned to such term in Section 6.04.

"IRS" shall mean the United States Internal Revenue Service.

"Joint Venture" shall mean a joint venture or similar arrangement, whether in corporate, partnership or other legal form which is not a Subsidiary but in which the Borrower or any Subsidiary owns or controls any Equity Interests; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"Judgment Currency" has the meaning assigned to such term in Section 9.24.

"Junior Lien" shall mean a Lien that is subordinated to the Liens securing the Obligations on terms satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

"Lender" shall mean each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 9.04), as well as any Person that becomes a "Lender" hereunder in accordance with Section 9.04.

"Lender Parent" shall mean, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender Party" shall mean the Administrative Agent or any Lender.

"Lending Office" shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

"Liabilities" shall mean any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Loan" shall mean a loan made pursuant to Section 2.01.

"Loan Documents" shall mean, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, the Security Documents, the Administrative Agent Fee Letter, each compliance certificate, the Intercreditor Agreement, any subordination agreement, and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, notices and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" shall mean Holdings, the Borrower, the Subsidiary Guarantors and any Parent Entity, in lieu of Holdings, that has executed and delivered an assumption agreement in substantially the form of Exhibit D to the Collateral Agreement and become a "Guarantor" and "Grantor" thereunder.

"Local Time" shall mean Dallas time.

"Margin Stock" shall mean margin stock within the meaning of Regulations T, U and X, as applicable.

"Material Adverse Effect" shall mean a material adverse change in, or material adverse effect on (a) the business, assets, financial condition or results of operations, in each case of Holdings, the Borrower and the Subsidiaries, taken as a whole, (b) the validity or enforceability of the Loan Documents, (c) the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents, (d) the Collateral, or the Administrative Agent's Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (e) the rights and remedies (taken as a whole) of the Administrative Agent and the Lenders under the Loan Documents.

"Material Agreement" shall mean, (a) the General Unsecured Cash Fund Escrow Agreement and (b) any other contract or agreement pursuant to which Holdings or its Subsidiaries is a party that if breached could reasonably be expected to cause a Material Adverse Effect.

"Material Indebtedness" shall mean, collectively, (i) the ABL Loan Obligations and (ii) any Indebtedness (other than the Loans), of any one or more of Holdings and its Subsidiaries in an aggregate principal amount exceeding $5.0 million.

"Material Intellectual Property" means any intellectual property that, individually or collectively, (a) is (i) necessary to the business of the Borrower and its Subsidiaries as currently conducted or (ii) is otherwise material to the business or operations of the Borrower and its Subsidiaries, taken as a whole, or (b) has a fair market value (as reasonably determined by the Borrower in good faith) in excess of $1.0 million.

"Maturity Date" shall mean December 31, 2024.

"Maximum Rate" shall have the meaning assigned to such term in Section 9.09.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage" shall mean any mortgage, deed of trust or other agreement in form and substance reasonably satisfactory to the Administrative Agent, which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on the applicable Real Property, including any amendment, restatement, modification or supplement thereto.

"Mortgageable Real Property" shall mean (a) any fee owned real property and related fixtures that is adjacent to, contiguous with or necessary or related to or used in connection with any real property then subject to a Mortgage in favor of the Administrative Agent, or (b) any other fee owned real property and related fixtures that either (i) has a fair market value in an amount equal to or greater than $1.0 million (or if an Event of Default has occurred and is continuing, then regardless of the fair market value of such real property and related fixtures) or (ii) is subject to a Lien in favor of the ABL Administrative Agent to secure the ABL Loan Obligations. For the avoidance of doubt, no real property that is subject to the Sale Leaseback shall be "Mortgageable Real Property."

"Mortgaged Properties" shall mean the fee owned real properties of the Loan Parties encumbered by a Mortgage pursuant to Section 5.09, if any.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six (6) plan years made or accrued an obligation to make contributions.

"Net Cash Proceeds" shall mean, with respect to any Prepayment/Reinvestment Event, (i) the gross cash proceeds (including payments from time to time in respect of installment obligations, if applicable, but only as and when received) received by or on behalf of Parent, Holdings, Borrower or any of its Subsidiaries in respect of such Prepayment/Reinvestment Event, less (ii) the sum of:

(a) the amount, if any, of all taxes (including in connection with any repatriation of funds) paid or estimated to be payable by Holdings, the Borrower or any of their Subsidiaries in connection with such Prepayment/Reinvestment Event,

(b) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (a) above) (1) associated with the assets that are the subject of such Prepayment/Reinvestment Event and (2) retained by the Holdings, the Borrower or any of their Subsidiaries; provided that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such a Prepayment/Reinvestment Event occurring on the date of such reduction,

(c) the amount of any Indebtedness (other than the Loans) secured by a Lien on the assets that are the subject of such Prepayment/Reinvestment Event to the extent that the instrument creating or evidencing such Indebtedness requires that such Indebtedness be repaid upon consummation of such Prepayment/Reinvestment Event,

(d) in the case of any Casualty Event, the amount of any proceeds of such Prepayment/Reinvestment Event that Holdings, the Borrower or any Subsidiary has reinvested (or intends to reinvest within the Reinvestment Period or has entered into a binding commitment prior to the last day of the Reinvestment Period to reinvest) in the respective businesses of the Borrower or any of the Subsidiaries by replacing properties or assets that are the subject of such Casualty Event or purchasing or constructing assets in the ordinary course of the business of Borrower and its Subsidiaries; provided that any portion of such proceeds that has not been so reinvested within such Reinvestment Period (with respect to such Prepayment/Reinvestment Event, the "Deferred Net Cash Proceeds") shall, unless the Borrower or a Subsidiary has entered into a binding commitment prior to the last day of such Reinvestment Period to so reinvest such proceeds no later than 180 days following the last day of such Reinvestment Period, (1) be deemed to be Net Cash Proceeds of a Casualty Event, occurring on the last day of such Reinvestment Period or, if later, 180 days after the date Holdings, the Borrower or such Subsidiary has entered into such binding commitment, as applicable (such last day or 180th day, as applicable, the "Deferred Net Cash Proceeds Payment Date"), and (2) be applied to the repayment of Loans and other Obligations in accordance with Section 2.11,

(e) in the case of any Casualty Event, by a non-wholly-owned Subsidiary, the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (e)) attributable to non-controlling interests and not available for distribution to or for the account of Holdings, the Borrower or a wholly-owned Subsidiary as a result thereof; and

(g) all documented fees and out-of-pocket expenses paid by Holdings, the Borrower or a Subsidiary in connection with any of the foregoing,

in each case, only to the extent not already deducted in arriving at the amount referred to in clause (i) above.

"Note" shall have the meaning assigned to such term in Section 2.09(d).

"Obligations" shall mean for purposes of the Loan Documents, all obligations of every nature of each Loan Party from time to time owed to the Administrative Agent (including any former Administrative Agent) or the Lenders, under any Loan Document, whether for principal, premiums (including the Prepayment Premium), interest (including interest, fees and other amounts which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any such Obligation, whether or not a claim is allowed against such Loan Party for such interest, fees and other amounts in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Other Connection Taxes" means, with respect to any Lender Party or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" shall mean any and all present or future stamp, court, intangible, recording, filing, documentary, excise, property or similar Taxes arising from any payment made hereunder or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto.

"Paid in Full" or "Payment in Full" means, (a) the payment in full in cash of all outstanding Loans, together with accrued and unpaid interest thereon and any premiums including the Prepayment Premium, (b) the payment in full in cash of all accrued and unpaid fees, (c) the payment in full in cash of all reimbursable expenses and other Secured Obligations (other than obligations for taxes, indemnification, charges and other inchoate or contingent or reimbursable liabilities for which no claim or demand for payment has been made or, in the case of indemnification, no notice has been given (or, in each case, reasonably satisfactory arrangements have otherwise been made) and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon and (d) the termination of all Commitments.

"Parent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Parent Entity" shall mean any of (i) Holdings and (ii) any other Person of which Holdings is a Subsidiary.

"Participant" shall have the meaning assigned to such term in Section 9.04(g).

"Participant Register" shall have the meaning assigned to such term in Section 9.04(g).

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Perfection Certificate" shall mean a certificate in form reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders) that provides information with respect to the Loan Parties and the Property of each Loan Party.

"Permitted Business Acquisition" shall mean any acquisition by the Borrower or any other Loan Party of all or substantially all of the assets of, or All Outstanding Equity Interests in, a Person or division or line of business of a Person, provided that: (i) on the date of execution of the purchase agreement in respect of such acquisition, no Event of Default shall have occurred and be continuing or would result therefrom; (ii) if the aggregate total consideration to be paid by the Borrower or any Subsidiary exceeds $2.5 million, the Borrower shall have delivered to the Administrative Agent at least five (5) days prior to such acquisition a certificate of a Responsible Officer of the Borrower to such effect, together with all financial information for such Subsidiary or assets that is reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders) and available to the Borrower; and (iii) if (with respect to any acquisition of a Person or any Equity Interests in a Person) the acquired Person shall not become a Subsidiary Guarantor or (with respect to any acquisition of assets) the assets shall be acquired by a Subsidiary that is not a Subsidiary Guarantor, the aggregate amount of cash or property paid by the Loan Parties in connection with such acquisition shall not exceed $2.5 million; and (iv) the total consideration paid or payable (including Indebtedness) for all such acquisitions shall not exceed $5 million during the term of this Agreement.

"Permitted Investments" shall mean:

(a) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two (2) years;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within one hundred eighty (180) days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250.0 million and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher by at least one (1) nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than one hundred eighty (180) days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one (1) year after the date of acquisition, issued by a corporation organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-2 (or higher) according to Moody's, or A-1 (or higher) according to S&P;

(e) securities with maturities of two (2) years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above; and

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5.0 billion.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the

Indebtedness so Refinanced (plus unpaid accrued interest and premium thereon, any committed or undrawn amounts and underwriting discounts, fees, commissions and expenses, associated with such Permitted Refinancing Indebtedness), except as otherwise permitted under Section 6.01, (b) other than with respect to Indebtedness permitted pursuant to Section 6.01(h) and Section 6.01(i), such Permitted Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is (i) by its terms subordinated in right of payment to the Obligations under this Agreement or (ii) unsecured Indebtedness, such Permitted Refinancing Indebtedness shall (x)(i) be subordinated in right of payment to such Obligations on terms not materially less favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, taken as a whole, or (ii) remain unsecured, respectively, and (y) have a final maturity date equal to or later than one hundred eighty (180) days after the Maturity Date, (d) no Permitted Refinancing Indebtedness shall have obligors or contingent obligors that were not obligors or contingent obligors (or that would not have been required to become obligors or contingent obligors) in respect of the Indebtedness being Refinanced except to the extent otherwise permitted under Section 6.01 or Section 6.04, and (e) if the Indebtedness being Refinanced is (or would have been required to be) secured with any Term Loan Priority Collateral, such Permitted Refinancing Indebtedness shall (x) be secured by a Junior Lien with respect to the Term Loan Priority Collateral pursuant to an intercreditor arrangement reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders) and (y) other than with respect to Indebtedness permitted pursuant to Section 6.01(j), have a final maturity date equal to or later than one hundred eighty (180) days after the Maturity Date.

"Person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, individual or family trust, or other organization (whether or not a legal entity), or any government or any agency or political subdivision thereof.

"Petition Date" shall have the meaning assigned such terms in the recitals to this Agreement.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" shall mean 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

"Plan of Reorganization" shall have the meaning assigned to such term in the recitals to this Agreement.

"Plan Sale Leaseback" shall have the meaning assigned to the term "Sale Leaseback" in the Plan of Reorganization.

"Prepayment/Reinvestment Event" shall mean any Debt Incurrence Prepayment Event or any Casualty Event.

"Prepayment Premium" shall mean an amount (which shall not be less than zero) equal to (x) $31,250,000 *minus* (y) the aggregate principal amount of the Loans advanced as of such date, plus all accrued interest thereon accrued as of such date (through and including such date).

"Prepetition Credit Agreement" shall mean that Credit Agreement, dated as of August 18, 2015, as amended, among the Borrower, the guarantors thereunder, the lenders party thereto from time to time, JPMorgan Chase Bank, N.A., as administrative agent, and the other agents and parties party thereto from time to time.

"primary obligor" shall have the meaning assigned to such term in the definition of "Guarantee."

"Pro Rata" shall mean with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) while Commitments are outstanding, by dividing the amount of such Lender's Commitment by the aggregate amount of all Commitments; and (b) at any other time, by dividing the amount of such Lender's Loans by the aggregate amount of all outstanding Loans.

"Prohibited Transaction" shall have the meaning assigned to such term in Section 406 of ERISA and/or Section 4975(c) of the Code.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including cash, securities, accounts, contract rights and Equity Interests or other ownership interests of any Person), whether now in existence or owned or hereafter acquired.

"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.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.21.

"Qualified Capital Stock" shall mean any Equity Interest of any Person that does not by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (a) provide for scheduled payments of dividends in cash (other than at the option of the issuer) prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Maturity Date, (b) become mandatorily redeemable at the option of the holder thereof (other than for Qualified Capital Stock or pursuant to customary provisions relating to redemption upon a change of control or sale of assets) pursuant to a sinking fund obligation or otherwise prior to the date that is, at the time of issuance of such Equity Interest, ninety-one (91) days after the Maturity Date or (c) become convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests that are not Qualified Capital Stock; provided further, that if any such Equity Interest is issued pursuant to a plan for the benefit of the employees, directors, officers, managers or consultants of Holdings (or any Parent Entity thereof), the Borrower or its Subsidiaries or by any such plan to such Persons, such Equity Interest shall not be regarded as an Equity Interest not constituting Qualified Capital Stock solely because it may be required to be repurchased by Holdings (any Parent Entity), the Borrower or its Subsidiaries in order to satisfy applicable regulatory obligations.

"Real Property" shall have the meaning assigned to such term in Section 3.07(c).

"Real Property Documents" shall mean, with respect to any real property, (a) a FIRREA compliant appraisal of such real property from appraisers engaged by the Administrative Agent, (b) Flood Documentation reasonably satisfactory to the Administrative Agent, (c) survey documentation reasonably satisfactory to the Administrative Agent, (d) a Title Insurance Policy, (e) opinions addressed to the Administrative Agent and the Lenders of (i) local counsel in each jurisdiction where the Mortgaged Property is located with respect to the enforceability of the Mortgages and other matters customarily included in such local law opinions and (ii) counsel for the Borrower regarding due authorization, execution and delivery of the Mortgages, in each case, in form and substance reasonably satisfactory to the Administrative Agent, (f) such other requirements or documents as may be reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders) and (g) any other documentation or confirmation required to be delivered or made pursuant to Section 5.09(f) and Section 5.09(g).

"Refinance" shall have the meaning assigned to such term in the definition of the term "Permitted Refinancing Indebtedness," "Refinancing" and "Refinanced" shall have meanings correlative thereto.

"Refunding Capital Stock" shall have the meaning assigned to such term in Section 6.06(i).

"Register" shall have the meaning assigned to such term in Section 9.04(e).

"Regulated Lender Entity" shall have the meaning assigned to such term in Section 5.09(f).

"Regulation D" shall mean Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" shall mean Regulation T of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Reinvestment Period" shall mean 180 days following the date of receipt of Net Cash Proceeds of a Casualty Event.

"Rejection Notice" shall have the meaning assigned to such term in Section 2.11(b)(iv).

"Related Fund" shall mean, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (i) such Lender, (ii) an Affiliate of such Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment. "Released" shall have a meaning correlative thereto.

"Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Report" shall mean reports prepared by any Person on behalf of the Administrative Agent (at the direction of the Required Lenders) showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrower, which Reports may be distributed to the Lenders by the Administrative Agent.

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code), other than those events as to which the thirty (30)-day notice period referred to in Section 4043(c) of ERISA has been waived.

"Required Lenders" shall mean, at any time, the Lenders holding more than 50% of the aggregate amount of Loans outstanding at any time.

"Resolution Authority" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restricted Debt Payment" shall have the meaning assigned to such term in Section 6.09(b).

"Restricted Payment" shall have the meaning assigned to such term in Section 6.06.

"Retained Declined Proceeds" shall have the meaning assigned to such term in Section 2.11(b)(iv).

"Revolver Loan" shall mean any "Revolver Loan" as defined in the ABL Credit Agreement.

"Rights Offerings" shall have the meaning assigned to such term in the Plan of Reorganization.

"S&P" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Lease-Back Transaction" shall have the meaning assigned to such term in Section 6.03.

"Sanctioned Country" shall mean, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, 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 OFAC, the U.S. Department of State, the or by the United Nations Security Council, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person directly or indirectly owned or controlled (individually or in the aggregate) by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject, or target, of any Sanctions.

"Sanctions" shall mean individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Secured Obligations" shall mean the Obligations.

"Secured Parties" shall mean (a) the Administrative Agent, (b) the Lenders and (c) the successors and assigns of each of the foregoing.

"Securities Act" shall mean the Securities Act of 1933.

"Security Documents" shall mean the Mortgages, the Collateral Agreement and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, and Control Agreements now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"Spring-Out Date" shall have the meaning given to such term in the ABL Credit Agreement as in effect on the date hereof.

"Subordinated Indebtedness" shall mean any unsecured Indebtedness of the Borrower or any Subsidiary that is expressly subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

"Subordinated Intercompany Debt" shall have the meaning assigned to such term in Section 6.01(d).

"Subsidiary" shall mean any direct or indirect subsidiary of the Borrower or a Loan Party, as applicable.

"subsidiary" shall mean, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, by the parent and/or one or more subsidiaries of the parent.

"Subsidiary Guarantor" shall mean each Loan Party other than Holdings and the Borrower.

"Supported QFC" has the meaning assigned to it in Section 9.21.

"Swap Agreement" shall mean any agreement, contract, or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act and any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one (1) or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, provided that no phantom stock or other employee benefit plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or consultants of Holdings, the Borrower or any of their Subsidiaries shall be a Swap Agreement.

"Tax and Trust Funds" means cash, cash equivalents or other assets comprised solely of (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party's employees in the current period (which may be monthly or quarterly, as applicable), (b) all taxes required to be collected, remitted or withheld in the current period (which may be monthly or quarterly, as applicable) (including, without limitation, federal and state withholding taxes (including the employer's share thereof)) and (c) any other funds which any Loan Party holds in trust or as an escrow or fiduciary for another person (which is not an Affiliate of a Loan Party) in the ordinary course of business and in connection with a transaction or arrangement not prohibited under this Agreement.

"Tax Distributions" shall have the meaning assigned to such term in Section 6.06(d).

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges), assessments, fees or withholdings imposed by any Governmental Authority and any and all interest and penalties related thereto.

"Term Loan Priority Collateral" shall have the meaning assigned such term in the Intercreditor Agreement.

"Term Loan Priority Collateral Account" shall mean a Deposit Account subject to the sole dominion and control of the Administrative Agent which holds solely identifiable proceeds of Term Loan Priority Collateral pending reinvestment or the application thereof to the Obligations in accordance with the Loan Documents and the Intercreditor Agreement.

"Title Insurance Policy" shall mean a mortgagee's loan policy, in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Required Lenders), together with all endorsements reasonably requested by the Administrative Agent (at the direction of the Required Lenders), issued by or on behalf of a title insurance company reasonably satisfactory to the Administrative Agent (at the direction of the Required Lenders), insuring the Lien created by a Mortgage in an amount and on terms reasonably satisfactory to the Administrative Agent (at the direction of the Required Lenders), delivered to the Administrative Agent.

"Transaction Costs" shall mean fees and expenses payable or otherwise borne by Holdings, any other Parent Entity, the Borrower and its Subsidiaries in connection with the Transactions occurring on or about the Closing Date.

"Transactions" shall mean, collectively, the transactions to occur pursuant to the Loan Documents, including (a) the execution and delivery of the Loan Documents and the borrowing of the Loans on the Closing Date, (b) the execution and delivery of the ABL Loan Documents and the ABL Loan Obligations thereunder and (c) the repayment of the Existing Debt.

"UK Financial Institutions" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" shall have the meaning assigned to such term in Section 9.21.

"U.S. Tax Compliance Certificate" shall have the meaning assigned to such term in Section 2.17(e)(ii)(B)(3).

"USA PATRIOT Act" shall mean The Uniting and Strengthening America by Providing Adequate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the product obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including a payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth that will elapse between such date and the making of such payment); by (b) the outstanding principal amount of such Indebtedness.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" 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.

(a) The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof. 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." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, the Loan Documents in which the reference appears unless the context shall otherwise require.

(b) Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or other document, agreement or instrument (including any by-laws, limited partnership agreement, limited liability company agreement, articles of incorporation, certificate of limited partnership or certificate of formation, as the case may be) shall mean such Loan Document, agreement or instrument as amended, restated, amended and restated, supplemented, otherwise modified, replaced, renewed, extended or refinanced from time to time and any reference in this Agreement to any Person shall include a reference to such Person's permitted assigns and successors-in-interest.

Section 1.03 Accounting Terms.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; provided further that if an amendment is requested by the Borrower or the Required Lenders, then the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); provided further that 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 (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value," as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of Capital Lease Obligations, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the date hereof) that would constitute Capital Lease Obligations on the date hereof shall be considered Capital Lease Obligations and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Lenders in accordance with the terms of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change). Notwithstanding anything to the contrary, for all purposes under this Agreement (other than for purposes of Sections 5.04(a), (b) or (c)) and the other Loan Documents, including negative covenants, financial covenants and component definitions, GAAP will be deemed to treat operating leases and Capital Lease Obligations in a manner consistent with their treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

Section 1.04 Rounding. Except as otherwise expressly provided herein, any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one (1) place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.06 Classification.

(a) For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, contractual restriction or prepayment of Indebtedness meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, the Borrower, in its sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category; provided that such transaction or item (or any portion thereof) may not be reclassified into Section 6.01(g), 6.04(r), 6.05(h), 6.06(h), 6.09(b) or 6.09(d).

(b) [Reserved].

Section 1.07 References to Laws. Unless otherwise expressly provided herein, references to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

Section 1.08 [Reserved].

Section 1.09 [Reserved].

Section 1.10 [Reserved].

Section 1.11 Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

Section 2.01 Commitments. Subject to and upon the terms and conditions herein set forth, each Lender severally agrees to make Loans denominated in Dollars to the Borrower on the Closing Date, which Loans shall not exceed for any such Lender the Commitment of such Lender and in the aggregate shall not exceed $25,000,000.00. Such Loans may be repaid or prepaid (as set forth in Section 2.17) in accordance with the provisions hereof, but once repaid or prepaid, may not be reborrowed.

Section 2.02 [Reserved]

Section 2.03 Request for Borrowing.

(a) To request a Borrowing of Loans on the Closing Date, the Borrower shall notify the Administrative Agent of such request in writing (delivered by email) by delivering a Borrowing Request signed by the Borrower not later than 12:00 p.m., Local Time, two (2) Business Days before the Closing Date. Such Borrowing Request shall be irrevocable. Each such written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day; and

(iii) the location and number of the Borrower's account to which funds are to be disbursed.

Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 [Reserved].

Section 2.05 [Reserved].

Section 2.06 Funding of the Borrowing.

(a) Each Lender shall make a Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all requested funds, the Administrative Agent will make the proceeds of such Loans available to the Borrower by promptly wire transferring the amounts so received, in like funds, to an account designated by the Borrower in the Borrowing Request.

Section 2.07 Administrative Agent Fee Letter. Borrower shall pay to the Administrative Agent, fees in the amounts and at the times set forth in the Administrative Agent Fee Letter.

Section 2.08 Repayment of Loans. All Loans plus all accrued and unpaid interest thereon plus any Prepayment Premium and any other amounts then outstanding on the Obligations (including any Prepayment Premium) shall be due and payable in full on the Maturity Date, unless payment is sooner required under this Agreement.

Section 2.09 Evidence of Debt.

(a) 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 the Loans made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain the Register in which it shall record (i) the amount of each Loan made hereunder, (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.

(c) The entries made in the accounts maintained pursuant to paragraph (a) or (b) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein 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 obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement and, provided further that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(d) Any Lender may request that the Loans made by it be evidenced by a promissory note (a "Note") in the form of Exhibit G. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one (1) or more promissory notes in such form.

Section 2.10 [Reserved].

Section 2.11 Prepayments of Loans.

(a) Voluntary Prepayment. On and prior to the first anniversary of the Closing Date, the Borrower shall not have the right to voluntarily prepay the Loans in whole or in part without the written consent of the Required Lenders. After the first anniversary of the Closing Date and upon prior written notice in accordance with Section 2.11(d), the Borrower shall have the right at any time and from time to time to prepay the Loans in whole (but not in part) in an amount equal to the aggregate principal amount of the Loans outstanding plus all accrued interest to but excluding the date of such prepayment plus the Prepayment Premium (if any).

(b) Mandatory Prepayment.

(i) Change in Control. Substantially concurrently with (but in no event more than one (1) Business Day following) the consummation of any Change in Control, the Borrower shall prepay the Loans in whole in an amount equal to the aggregate principal amount of the Loans outstanding plus all accrued interest to but excluding the date of such prepayment and any other amounts then outstanding on the Obligations plus the Prepayment Premium (if any).

(ii) Proceeds of a Debt Incurrence Prepayment Event/Casualty Event. Subject to the terms of the Intercreditor Agreement, on each occasion that a Debt Incurrence Prepayment Event or Casualty Event occurs, the Borrower shall, within one (1) Business Day after receipt of the Net Cash Proceeds of a Debt Incurrence Prepayment Event and within ten (10) Business Days after the the occurrence of a Casualty Event (or, in the case of Deferred Net Cash Proceeds, within ten (10) Business Days after the Deferred Net Cash Proceeds Payment Date), prepay, in accordance with clause (iii) below, Loans and other Obligations with an amount equal to (x) 100% of the Net Cash Proceeds from such Debt Incurrence Prepayment Event or Casualty Event (to the extent not reinvested) for application to the Loans plus (y) if such Debt Incurrence Prepayment Event or Casualty Event results in the payment in full of the Loans, the Prepayment Premium.

(iii) Application to Term Loans. Subject to clause (iv) below, each prepayment required by Section 2.11(b) shall be allocated pro rata among the Loans based on the applicable remaining principal due thereunder.

(iv) Rejection Right. Each Lender may reject all (but not less than all) of its pro rata share of any mandatory prepayment with respect to a Debt Incurrence Prepayment Event or Casualty Event under clause (ii) above (such declined amounts, the "Declined Proceeds") of Loans by providing written notice (each, a "Rejection Notice") to the Administrative Agent no later than 3:00 p.m. Local Time one (1) Business Day prior to the requested date of such prepayment. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Loans. Any Declined Proceeds shall be retained by the Borrower ("Retained Declined Proceeds").

(c) [Reserved].

(d) The Borrower shall notify the Administrative Agent in writing, of any prepayment under this Agreement not later than 12:00 p.m., Local Time, three (3) Business Days before the date of such prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid, and the calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents.

(e) In the event that all of the Loans are prepaid or required to be prepaid pursuant to this Section 2.11, (in each case, whether before or after the occurrence of an Event of Default or the commencement of any insolvency or bankruptcy proceeding, and notwithstanding any acceleration (for any reason) of the Obligations), the Borrower shall pay the Prepayment Premium. Notwithstanding anything herein to the contrary, if a prepayment event described in this Section 2.11 occurs or exists which requires that the Prepayment Premium be paid, then the Administrative Agent shall be paid, for the benefit of Lenders holding such Loans as an inducement for making the Loans (and not as a penalty) the Prepayment Premium, which Prepayment Premium shall be fully earned, and due and payable, on the date of such payment or prepayment, or on the date such payment or prepayment is required to be made, as applicable, and non-refundable when made.

(f) Without limiting the generality of the foregoing Section 2.11 and notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Loan Parties hereby acknowledge and agree that if the Obligations are accelerated for any reason, including because of an Event of Default (including by operation of law or otherwise), the commencement of any insolvency proceeding or other proceeding pursuant to any applicable debtor relief laws, sale, disposition or encumbrance (including that by operation of law or otherwise) or a satisfaction or release by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means, the Prepayment Premium, determined as of the date of acceleration will also be due and payable as though said Obligations were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. The Prepayment Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination and Borrower agrees that it is reasonable under the circumstances. Borrower expressly agrees that: (i) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium, and (iv) the Prepayment Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such Event of Default. THE OBLIGORS EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Loan Parties expressly acknowledge that their respective agreement to pay the Prepayment Premium as herein described is a material inducement to the Lenders to provide the Commitments hereunder and to make the Loans. Furthermore, the Loan Parties acknowledge and agree that the Loan Parties and their respective affiliates shall be estopped hereafter from claiming differently than as agreed to with respect to the Prepayment Premium and the Loan Parties acknowledge and agree that the Prepayment Premium is not intended to act as a penalty or to punish the Loan Parties for any action. If the Loans are accelerated for any reason under this Agreement, the Prepayment Premium applicable thereto shall be calculated as if the date of acceleration of such Loans was the date of prepayment of such Loans. The parties hereto further acknowledge and agree that the Prepayment Premium is not intended to act as a penalty or to punish the Loan Parties for any such repayment or prepayment.

Section 2.12 [Reserved].

Section 2.13 Interest.

(a) The Loans shall bear interest on the outstanding principal amount thereof (including, for the avoidance of doubt, capitalized interest that has already been added to principal) from the date when made to but excluding the date such Loans are fully repaid at a rate of 14% per annum, accruing daily. Interest shall be paid in kind and capitalized as additional principal amounts of the Loans, compounding on an annual basis on the last Business Day of each Fiscal Year of the Borrower and thereafter, shall bear interest as provided hereunder as if such capitalized interest had originally been part of the outstanding principal amount of the Loans.

(b) [Reserved].

(c) [Reserved].

(d) Notwithstanding the foregoing, if (x) any principal of or interest on any Loan or any fees or premiums (including any Prepayment Premium) or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise or (y) any Event of Default exists, all outstanding amounts (including any Prepayment Premium) shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of principal of, or interest on, any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to Loans as provided in paragraph (a) of this Section (in each case, the "Default Rate"). Interest pursuant to this paragraph (d) shall be paid in kind and capitalized as additional principal amounts of the Loans, compounding on an annual basis on the last Business Day of each Fiscal Year of the Borrower and thereafter, shall bear interest as provided hereunder as if such capitalized interest had originally been part of the outstanding principal amount of the Loans.

(e) Accrued interest on each Loan shall be payable as required by Section 2.13(a) or Section 2.13(d) and on the Maturity Date; provided that in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(f) All interest hereunder shall be computed on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.14 [Reserved].

Section 2.15 Increased Costs.

(a) [Reserved]

(b) If any Lender determines (i) that any Change in Law shall subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (c) or (e) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto or (ii) that any Change in Law regarding capital requirements or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time within thirty (30) days of receipt of a certificate of the type specified in paragraph (d) below the Borrower shall pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

(d) A certificate of a Lender setting forth in reasonable detail the calculation of the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error; provided that such certificate from each such Lender shall contain a certification to the Borrower that such Lender is generally requiring reimbursement for the relevant amounts from similarly situated borrowers under comparable syndicated credit facilities. The Borrower shall pay such Lender, as applicable, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(e) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender shall notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 [Reserved].

Section 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without deduction or withholding for any Taxes, except as Required by Applicable Law; provided that if a Loan Party or other applicable withholding agent shall be required by Applicable Law (as determined in the good faith discretion of such Loan Party or other applicable withholding agent) to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by any Loan Party shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender, as applicable, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable, or, at the option of the Administrative Agent, timely reimburse it for, the payment of any Other Taxes.

(c) Each Loan Party shall indemnify each Lender Party, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or payable by each Lender Party, on, or required to be withheld or deducted, with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability, prepared in good faith and delivered to such Loan Party by a Lender Party on its own behalf or on behalf of another Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or 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 Loan Document, IRS Form W-8BEN or 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) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one (1) or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender and in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as

reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (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 Section 2.17(f) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Loan Parties or any other Person.

(g) [Reserved].

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, premiums (including the Prepayment Premium, if owed) or of amounts payable under Section 2.15, 2.16, or 2.17, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent in writing from time to time. 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 off all required funds. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest, premiums (including the Prepayment Premium, if owed) and fees then due from the Borrower hereunder, such funds (except as otherwise provided in the Collateral Agreement with respect to the application of amounts realized from the Collateral) shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and any premiums (including the Prepayment Premium, if owed) then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and premiums (including the Prepayment Premium, if owed) then due to such parties.

(c) If (other than (x) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans to any assignee or participant, including any assignee or participation that is a Loan Party or any of its Affiliates or (y) as otherwise expressly provided elsewhere herein, including, without limitation, as provided in or contemplated by Section 9.04(f)) 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 Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its 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 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 Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (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. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use commercially reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) repay all Obligations (including any Prepayment Premium, if owed) of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (ii) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments, (iv) [reserved], (v) such assignment shall otherwise comply with Section 9.04 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (vi) until such time as such Obligations (including any Prepayment Premium, if owed) are repaid or such assignment is consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.15 or Section 2.17, as the case may be. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrower, the Administrative Agent or any Lender may have against any replaced Lender. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.19(b).

ARTICLE III

Representations and Warranties

Each of Holdings (solely to the extent applicable to it) and each other Loan Party represents and warrants to the Administrative Agent and each of the Lenders:

Section 3.01 Organization; Powers. Each of Holdings, the Borrower and each of the Subsidiaries (a) is a limited partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business and in good standing in each jurisdiction where such qualification is required; except in each case referred to in this Section 3.01 (other than in clause (a) and clause (b), respectively, with respect to the Borrower), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization. The execution, delivery and performance by Holdings, the Borrower and each of the Subsidiary Guarantors of each of the Loan Documents to which it is a party, and the borrowings hereunder, the consummation of the Plan of Reorganization, the transactions forming a part of the Transactions and the payment of the Transaction Costs (a) have been duly authorized by all corporate, stockholder, limited partnership or limited liability company action required to be obtained by Holdings, the Borrower and such Subsidiary Guarantors and (b) will not (i) violate (A) any provision of (x) law, statute, rule or regulation applicable

to such party, or (y) of the certificate or articles of incorporation or other constitutive documents or by-laws of Holdings, the Borrower or any such Subsidiary Guarantor, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which Holdings, the Borrower or any such Subsidiary Guarantor is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in clause (b)(i)(A)(x), (b)(i)(B), (b)(i)(C) or (b)(ii) of this Section 3.02, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Holdings, the Borrower or any such Subsidiary Guarantor, other than the Liens created by the Loan Documents and Liens permitted by Section 6.02 hereof.

Section 3.03 Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

Section 3.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the consummation of the Plan of Reorganization, the Transactions and the payment of the Transaction Costs, except for (a) the filing of Uniform Commercial Code financing statements, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) such as have been made or obtained and are in full force and effect, (d) such actions, consents, approvals, registrations or filings the failure to be obtained or made which could not reasonably be expected to have a Material Adverse Effect and (e) the recordation of Mortgages.

Section 3.05 Financial Statements.

(a) All financial statements of the Borrower and its Subsidiaries that have been or may hereafter be delivered by any Loan Party to the Administrative Agent and/or the Lenders present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of the Borrower and its Subsidiaries as of the date(s) and for the period(s) thereof in accordance with GAAP.

(b) No Loan Party or any Subsidiary has as of the Closing Date any material indebtedness or any material contingent liabilities, off-balance sheet liabilities or liabilities for Taxes, except as referred to or reflected in the financial statements of the Loan Parties or their Subsidiaries previously delivered to the Lenders.

Section 3.06 No Material Adverse Effect. Since the Petition Date, no event, development, circumstance or change has occurred that has or would reasonably be expected to have a Material Adverse Effect.

Section 3.07 Title to Properties; Possession Under Leases.

(a) Each of Holdings, the Borrower and the Subsidiaries has good and insurable fee simple title to the Mortgaged Properties, if any, and good and insurable fee simple title to, or good and valid interests in easements or other limited property interests in, as applicable, all its other real properties and has good and valid title to its personal property and assets, in each case, free and clear of Liens except for defects in title that do not impair the value thereof in any material respect or interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and Liens expressly permitted by Section 6.02.

(b) Each of Holdings, the Borrower and the Subsidiaries owns or possesses, or is licensed or otherwise has the right to use, all patents, trademarks, service marks, trade names and copyrights and all licenses and rights with respect to the foregoing, reasonably necessary for the present conduct of its business, without any conflict (of which the Borrower has been notified in writing)

with the rights of others, except where the failure to have such rights or where such conflicts and restrictions could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, to the knowledge of the Loan Parties or any Subsidiary, the use of such trademarks, copyrights, patents, licenses and other intellectual property by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement except as set forth on Schedule 3.07(b).

(c) As of the date of the Closing Date, Schedule 3.07(c) sets forth the address of each parcel of real property that is owned by any Loan Party and each material parcel of real property that is leased by any Loan Party (collectively, the "Real Property"). As of the Closing Date, to the knowledge of the Loan Parties and following the assumption of such leases pursuant to the Plan of Reorganization, (i) each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, (ii) no Loan Party is in default under its material monetary obligations with respect to each of its leases and subleases, and (iii) there are no other material defaults with respect to any of such leases or subleases, subject to any applicable cure periods.

Section 3.08 Subsidiaries.

(a) Schedule 3.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each Subsidiary of Holdings and, as to each such Subsidiary, the percentage of each class of outstanding Equity Interests owned by Holdings or by any such Subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than directors' qualifying shares) of any nature relating to any Equity Interests of any Subsidiary.

Section 3.09 Litigation; Compliance with Laws.

(a) There are no actions, suits, investigations or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending against, or to the knowledge of Holdings or the Borrower threatened in writing against, Holdings or the Borrower or any of the Subsidiaries or any business, property or rights of any such Person (i) that involve any Loan Document, the Transactions or the payment of the Transaction Costs or (ii) that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Holdings, the Borrower, the Subsidiaries or their respective properties or assets is in violation of any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws that are the subject of Section 3.16) or any restriction of record or agreement affecting any owned real property, including the Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.10 Investment Company Act. None of Holdings, the Borrower or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.11 Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly, as set forth in Section 5.13.

Section 3.12 Federal Reserve Regulations.

(a) None of Holdings, the Borrower or any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

Section 3.13 Tax Returns.

(a) Each of Holdings, the Borrower and its Subsidiaries has filed or caused to be filed all U.S. federal, state, local and non-U.S. Tax returns required to have been filed by it that are material to such companies, taken as a whole, and each such Tax return is true and correct in all material respects;

(b) Each of Holdings, the Borrower and its Subsidiaries has timely paid or caused to be timely paid all material Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all such amounts due) (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which Holdings, the Borrower or any of its Subsidiaries (as the case may be) has set aside on its books adequate reserves (in accordance with GAAP), which Taxes, if not paid or adequately provided for, could, individually or in the aggregate, reasonably be expected to have, a Material Adverse Effect); and

(c) With respect to each of Holdings, the Borrower and its Subsidiaries, no tax lien has been filed, and, to the knowledge of the Borrower and its Subsidiaries, no claim is being asserted, with respect to any such Taxes, in each case in an amount in excess of $2,000,000 in the aggregate for all such tax liens and claims.

Section 3.14 Disclosure.

(a) The Loan Parties have disclosed to the Lenders all Material Agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Perfection Certificate nor any of the other reports, financial statements, certificates or other information (other than information of a general economic or industry specific nature) furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Closing Date, as of the Closing Date.

(b) As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement, if any, is true and correct in all material respects.

Section 3.15 Employee Benefit Plans.

(a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Loan Party and each ERISA Affiliate is in compliance with the applicable provisions of ERISA and the provisions of the Code relating to Plans and the regulations and published interpretations thereunder; and (ii) no ERISA Event has occurred or is reasonably expected to occur; the present value of all accumulated benefit obligations under each Plan (based on those assumptions used for purposes of Accounting Standards Codification No. 715: Compensation Retirement Benefits) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan allocable to such accrued benefits and the present value of all accrued benefit obligations of all underfunded Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed the value of the assets of all such underfunded Plans.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Foreign Plan Event has occurred.

Section 3.16 Environmental Matters. Except as to matters that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice of violation, request for information, order, complaint or assertion of penalty has been received by the Borrower or any of the Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened which allege a violation of or liability under any Environmental Laws or concerning Hazardous Materials, in each case relating to the Borrower or any of the Subsidiaries, (ii) the Borrower and the Subsidiaries has all permits necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits and with all other applicable Environmental Laws, (iii) no Hazardous Material is located at any property currently or formerly owned, operated or leased by the Borrower or any of the Subsidiaries in quantities or concentrations that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated by or on behalf of the Borrower or any of the Subsidiaries that has been transported to or Released at or from any location in a manner that would reasonably be expected to give rise to any liability or obligation of the Borrower or any of the Subsidiaries, and (iv) there is no agreement to which the Borrower or any of the Subsidiaries is a party in which the Borrower or any of the Subsidiaries has assumed or undertaken, or retained, responsibility for any known or reasonably likely liability or obligation arising under or relating to Environmental Laws.

Section 3.17 Security Documents.

(a) The Collateral Agreement is effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of Deposit Accounts, when Control Agreements are entered into by the Administrative Agent, and in the case of the other Collateral described in the Collateral Agreement, when financing statements and other filings described on Schedule 3.17 are filed in the offices specified on Schedule 3.17, the Administrative Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Obligations (including any Prepayment Premium, if owed), in each case to the extent security interests in such Collateral can be perfected by the execution of Control Agreements or the filing Uniform Commercial Code financing statements, as applicable, in each case prior and superior in right to any other Person (except, Liens expressly permitted by Section 6.02).

(b) The Mortgages, if any, shall be effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) a legal, valid and enforceable Lien on all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgages are filed or recorded in the proper real estate filing or recording offices, the Administrative Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to any other Person, other than with respect to the rights of a Person pursuant to Liens expressly permitted by Section 6.02.

Section 3.18 Solvency. Immediately after giving effect to the consummation of the Plan of Reorganization (including the making of all distributions and payments required thereunder), the Transactions and the payment of the Transaction Costs on the Closing Date and immediately following the making of the Loans and the Revolver Loans (as defined in the ABL Credit Agreement) on the Closing Date and on the date of each Borrowing (as defined in the ABL Credit Agreement) and after giving effect to the application of the proceeds of the Loans and the Revolver Loans (as defined in the ABL Credit Agreement), (i) the fair value of the assets of Holdings, the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Holdings, the Borrower and its Subsidiaries on a consolidated basis, respectively; (ii) the present fair saleable value of the property of Holdings, the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of Holdings, the Borrower and its Subsidiaries on a consolidated basis, respectively, on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) Holdings, the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) Holdings, the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

Section 3.19 Labor Matters. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other Applicable Law dealing with such matters; (c) all Persons treated as contractors by the Borrower and the Subsidiaries are properly categorized as such, and not as employees, under Applicable Law; and (d) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect the consummation of the Transactions and the payment of the Transaction Costs will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of its Subsidiaries (or any predecessor) is a party or by which Holdings, the Borrower or any of its Subsidiaries (or any predecessor) is bound.

Section 3.20 Insurance. Schedule 3.20 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of Holdings, the Borrower or the Subsidiaries as of the Closing Date. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

Section 3.21 USA PATRIOT Act and OFAC.

(a) To the extent applicable, each Loan Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) USA PATRIOT Act. To the knowledge of the Borrower, no part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions, and the Loan Parties, their Subsidiaries and their respective officers and employees.

(c) To the knowledge of the Loan Parties, each of their directors and agents are in compliance with Anti-Corruption Laws and Sanctions in all material respects.

(d) None of (i) Holdings, the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (ii) to the knowledge of the Borrower, any agent of Holdings, 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.

(e) No Loan or use of proceeds of any Loan by the Borrower or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

Section 3.22 EEA Financial Institution. No Loan Party is an EEA Financial Institution.

Section 3.23 Plan Assets. None of the Borrower or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan under this Agreement, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

Section 3.24 Common Enterprise. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

Section 3.25 Material Agreements. All Material Agreements to which any Loan Party or any Subsidiary is a party or is bound as of the date of this Agreement are listed on Schedule 3.25. No Loan Party nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any Material Agreement to which it is a party or (ii) any agreement or instrument evidencing or governing any Material Indebtedness, in each case, except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

ARTICLE IV

Conditions Precedent

Section 4.01 Closing Date. The obligations of the Lenders to make Loans under this Agreement shall not become effective until the date on which each of the following conditions are satisfied or waived:

(a) The representations and warranties set forth in Article III hereof shall be true and correct in all material respects (without duplication of any materiality qualification applicable thereto) as of such date, 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 (without duplication of any materiality qualification applicable thereto) as of such earlier date).

(b) At the time of and immediately after giving effect to the Closing Date, no Event of Default or Default shall have occurred and be continuing or would result from any Loan to occur on the date hereof or the application of the proceeds thereof.

(c) The Lenders and the Administrative Agent (or their respective counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.13(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Lenders (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document.

(d) The Administrative Agent shall have received, on behalf of itself and the Lenders on the Closing Date, a written opinion from Haynes and Boone, LLP, special counsel for Holdings and the Borrower (A) dated the Closing Date, (B) addressed to the Administrative Agent and the Lenders on the Closing Date and (C) in form and substance reasonably satisfactory to the Lenders and covering such other matters relating to the Loan Documents and the Transactions as the Lenders shall reasonably request, and each of Holdings and the Borrower hereby instructs its counsel to deliver such opinions.

(e) The Lenders and the Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii), (iii) and (iv) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official);

(ii) a certificate of the secretary or assistant secretary or similar officer of each Loan Party dated the Closing Date and certifying:

(A) that attached thereto is a true and complete copy of the by-laws (or limited partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party,

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above; and

(iv) a certificate of a Responsible Officer of the Borrower certifying that as of the Closing Date the conditions precedent contained in clauses (a), (b), and (l) of this Section 4.01 are satisfied.

(f) The Administrative Agent shall have received each Control Agreement required to be provided pursuant to Section 5.12(d).

(g) (i) the Lenders shall have received a duly completed Perfection Certificate dated as of the Closing Date, together with all attachments contemplated thereby, (ii) the Lenders shall have received the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties and copies of the financing statements (or similar documents) disclosed by such search and (iii) the Lenders shall have received evidence reasonably satisfactory to the Lenders that the Liens indicated by such financing statements (or similar documents) are either permitted by Section 6.02 or have been released (or authorized for release in a manner reasonably satisfactory to the Lenders).

(h) Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Lenders to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02 to be prior to the Liens of the Administrative Agent in the applicable Collateral (including Liens on ABL Priority Collateral securing the ABL Loan Obligations permitted under Section 6.02(b)(iii))), shall have been filed, registered or recorded or immediately upon the closing of this Agreement will be filed, registered or recorded by Administrative Agent.

(i) On the Closing Date, substantially concurrently with the funding of the Loans, Holdings and its Subsidiaries shall have paid in full the Existing Debt and caused the termination of any commitments to lend or make other extensions of credit under the Prepetition Credit Agreement, the DIP ABL Credit Agreement and the DIP RE Credit Agreement.

(j) The Lenders and the Administrative Agent shall have received a solvency certificate substantially in the form of Exhibit D and signed by a Responsible Officer of the Parent.

(k) The Lenders and the Administrative Agent shall have received all fees payable thereto on or prior to the Closing Date and, to the extent invoiced at least 3 Business Days prior to the Closing Date, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented (in summary format) out-of-pocket expenses (including reasonable and documented (in summary format) fees, charges and disbursements of Kirkland & Ellis LLP and Holland & Knight LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(l) Since the Petition Date, there shall not have occurred and there is no circumstance or occurrence that is reasonably likely to have (individually or in the aggregate) a Material Adverse Effect, excluding the pendency of the Cases.

(m) The Administrative Agent and the Lenders shall have received, at least five (5) days prior to the Closing Date, (i) all documentation, to include a duly executed IRS Form W-9 or such other applicable IRS Form and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Closing Date, any Lender that has requested, in a written notice to the Borrower, a Beneficial Ownership Certification in relation to the Borrower shall have received, and the Administrative Agent shall have received, such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(n) [Reserved].

(o) The terms of (i) the Plan of Reorganization and (ii) all orders of the Bankruptcy Court approving the Plan of Reorganization, the credit facility provided under this Agreement, or affecting the rights, remedies and obligations of the Administrative Agent and the Lenders hereunder and thereunder, shall be in form and substance acceptable to the Lenders and the Administrative Agent in all material respects.

(p) The Confirmation Order shall have been entered upon proper notice to all parties to be bound by the Plan of Reorganization, all as may be required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, order of the Bankruptcy Court, and any applicable local bankruptcy rules. Moreover, (i) unless otherwise waived by the Lenders, no appeal or petition for review, rehearing or certiorari with respect to the Confirmation Order may be pending and (ii) the Confirmation Order must otherwise be in full force and effect. The effective date of the Plan of Reorganization shall have occurred on or prior to the Closing Date.

(q) The Bankruptcy Court shall have entered an order, in form and substance acceptable to the Required Lenders, approving the Commitment Letter.

(r) The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Required Lenders and otherwise in compliance with the terms of Section 5.02 hereof.

(s) [Reserved].

(t) All legal (including tax) and regulatory matters shall be satisfactory to the Lenders, including compliance with all applicable requirements of Regulation T, Regulation U and Regulation X of the Board, and the Lenders' counsel shall have completed all legal due diligence.

(u) The corporate structure, capital structure and other debt instruments, material accounts and governing documents of the Loan Parties shall be acceptable to the Lenders in their sole discretion.

(v) The Lenders shall have received evidence that all consents and approvals, if any, required to be obtained from any Governmental Authority or other Person in connection with the Transactions (including member and shareholder approvals) have been obtained and are in full force and effect.

(w) The Lenders and the Administrative Agent shall have received executed copies of the ABL Credit Agreement and all material ABL Loan Documents, each of which shall be in form and substance satisfactory to the Lenders in all respects.

(x) The Administrative Agent and the Lenders shall have received a copy of the Intercreditor Agreement executed by the ABL Administrative Agent and the Loan Parties and which shall be in form and substance satisfactory to Administrative Agent (acting at the direction of the Required Lenders) in all respects.

Each Lender, by delivering its signature page to this Agreement shall be deemed to have acknowledged receipt of and consented to and approved each Loan Document and each other document required to be approved by any Lender, as applicable, on the Closing Date.

ARTICLE V

Affirmative Covenants

Each of Holdings (solely as to Sections 5.01, 5.05 and 5.09 as applicable to it) and the Borrower covenants and agrees with the Administrative Agent and each Lender that until all of the Secured Obligations (including any Prepayment Premium, if owed) have been Paid in Full, unless the Required Lenders shall otherwise consent in writing, the Borrower (and Holdings solely to the extent applicable to it) will, and the Borrower will cause each of the Subsidiaries to:

Section 5.01 Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except (i) where the failure to do so would not reasonably be expected to have a Material Adverse Effect and (ii) as otherwise expressly permitted under Section 6.05.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and (ii) at all times maintain and preserve all property reasonably necessary to the normal conduct of the business of the Borrower and the Subsidiaries and keep such property in satisfactory repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto in accordance with prudent industry practice (in each case except as expressly permitted by this Agreement).

Section 5.02 Insurance.

(a) Maintain, with financially sound and reputable insurance companies having a financial strength rating of at least "A-" from A.M. Best & Co., insurance in such amounts and against such risks and such other hazards as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. Each such policy of insurance shall (i) name the Administrative Agent, on behalf of Secured Parties as an additional insured thereunder as its interests may appear, to the extent customary for such type of insurance and (ii) in the case of each casualty insurance policy and marine cargo insurance policy, contain a lender's loss payable clause and endorsement or such other customary endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Administrative Agent, on behalf of Lenders as the loss payee and mortgagee, if applicable, thereunder and to the extent available provides for at least thirty (30) days' prior written notice to the Administrative Agent of any cancellation of such policy.

(b) If any improved real property is included in the Collateral and the area in which the Premises (as defined in the Mortgages) are located is designated a special "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency

Management Agency (or any successor agency), obtain flood insurance from such providers, in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Administrative Agent evidence of such compliance in form and substance reasonably satisfactory to the Required Lenders.

Section 5.03 Taxes. Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, pay and discharge promptly when due all material Taxes, imposed upon it or upon its income or profits or in respect of its property, as well as all lawful claims which, if unpaid, might give rise to a Lien (other than a Lien permitted under Section 6.02) upon such properties or any part thereof except to the extent not overdue by more than thirty (30) days or, if more than thirty (30) days overdue (a) the validity or amount thereof shall be contested in good faith by appropriate proceedings, and the Borrower or the affected Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto and (b) in the case of a Tax or claim which has or may become a Lien on any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) within ninety (90) days after the end of each fiscal year (commencing with fiscal year 2021), a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of Holdings and its Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be accompanied by customary management's discussion and analysis and audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which opinion shall be without a "going concern" or like qualification, other than solely with respect to an upcoming maturity date of Indebtedness or a potential inability to satisfy a financial covenant, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements fairly present, in all material respects, the financial condition and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP, supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial condition and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of annual reports on Form 10-K of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(a) to the extent such annual reports include the information specified herein);

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year (commencing with the first full fiscal quarter ending after the occurrence of the Spring-Out Date), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail and which consolidated balance sheet and related statements of operations and cash flows shall be accompanied by customary management's discussion and analysis and certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes), supporting schedules reconciling such consolidated balance sheet and related statements of operations and cash flows with the consolidated financial position and results of operations of Holdings or the Borrower, as applicable, for the relevant period (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q of Holdings and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(b) to the extent such quarterly reports include the information specified herein);

(c) at all times prior to the end of the first full fiscal quarter ending after the occurrence of the Spring-Out Date and at any time thereafter if a Cash Dominion Trigger Period is in effect, within thirty (30) days after the end of each month (or after the Spring-Out Date, for each of the first two (2) months of each fiscal quarter), a balance sheet and related statements of operations and cash flows showing the financial position of Holdings and its Subsidiaries as of the close of such month and the consolidated results of its operations during such month, all of which shall be in reasonable detail and certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes);

(d) (i) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form attached hereto as Exhibit E (x) certifying that no Default or Event of Default has occurred or, if such a Default or an Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (y) setting forth the reasonably detailed calculations with respect to the Consolidated Fixed Charge Coverage Ratio (as defined in the ABL Credit Agreement) for such period, whether or not the requirements of Section 6.10 of the ABL Credit Agreement are then in effect;

(e) (i) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and other materials filed by Holdings, the Borrower or any of its Subsidiaries with the SEC or any securities exchange, or distributed to its stockholders generally, as applicable and all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries and (ii) so long as ABL Loan Obligations are outstanding, on Thursday of each week, weekly reports and forecasts of cash flows in form and substance reasonably satisfactory to the Required Lenders (it being understood and agreed that the form of weekly reports and forecasts of cash flows delivered to the Lenders prior to the Closing Date are reasonably satisfactory); provided, that the Borrower shall only be required to provide the deliverables set forth in this clause (ii) to the extent the outstanding balance of Revolver Loans has been greater than $0 for three (3) consecutive days;

(f) together with each delivery under Section 5.04(a), a detailed consolidated and consolidated quarterly budget for such fiscal year (including a projected consolidated and consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated and consolidated statements of projected cash flow and projected income) and, as soon as available, significant revisions, if any, of such budget and quarterly projections with respect to such fiscal year (to the extent that such revisions have been approved by the Borrower's board of directors (or equivalent governing body)), including a description of underlying assumptions with respect thereto (collectively, the "Budget"), which Budget shall in each case be accompanied by the statement of a Financial Officer of the Borrower to the effect that, to such Financial Officer's knowledge, the Budget is a reasonable estimate for the period covered thereby;

(g) promptly following a request therefor, all documentation and other information that the Administrative Agent reasonably requests on its behalf or on behalf of any Lender in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(h) together with the delivery of the annual compliance certificate required by Section 5.04(d), deliver an updated Perfection Certificate reflecting all changes since the date of the information most recently received pursuant to this paragraph (h) or Section 5.09(e);

(i) promptly following reasonable request therefore from the Administrative Agent (for itself or on behalf of any Lender), copies of (i) any documents described in Sections 101(f) and/or (j) of ERISA with respect to any Plan, and/or (ii) any notices or documents described in Sections 101(f), (k) and/or (l) of ERISA requested with respect to any Multiemployer Plan; provided, that if any Loan Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, then, upon reasonable request of the Administrative Agent (for itself or on behalf of any Lender), the Loan Party(ies) and/or the ERISA Affiliate(s) shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof;

(j) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any of its Subsidiaries, or compliance with the terms of any Loan Document, as in each case the Administrative Agent (for itself or on behalf of any Lender) may reasonably request;

(k) promptly, but in any event within three (3) Business Days after the furnishing, receipt or execution thereof, copies of (i) any amendment, waiver, consent or other written modification of the ABL Credit Agreement or any material amendment, waiver, consent or other written modification of any other ABL Loan Document, (ii) any notice of default or event of default or any notice related to the exercise of remedies under the ABL Loan Documents, and (iii) any other material notice, certificate or other information or document provided to, or received from, the ABL Administrative Agent or the ABL Secured Parties (in their capacities as such), including, without limitation, copies of all Borrowing Base Certificates (as defined in the ABL Credit Agreement) and other financial and collateral reporting provided under the ABL Credit Agreement;

(l) promptly, but in any event within five (5) Business Days after the furnishing, receipt or execution thereof, copies of (i) any termination, material amendment or other material written modification of any Material Agreement or any Material Indebtedness (other than the ABL Loan Obligations), and (ii) any notice of default or any notice related to the exercise of remedies with respect to any Material Indebtedness (other than the ABL Loan Obligations); and

(m) documents required to be delivered pursuant to this Section 5.04 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower (or a representative thereof) posts such documents (or provides a link thereto) at www.tuesdaymorning.com; provided that, other than with respect to items required to be delivered pursuant to Section 5.04(e) above, Holdings or the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at www.tuesdaymorning.com and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; (ii) on which such documents are delivered by Holdings or the Borrower to the Administrative Agent for posting on behalf of Holdings and the Borrower on IntraLinks, SyndTrak or another relevant secure 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); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) with respect to any item required to be delivered pursuant to Section 5.04(e) above in respect of information filed by Holdings or its applicable Parent Entity with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q reports and Form 10-K reports), on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority.

Section 5.05 Notices of Material Events. Furnish to the Administrative Agent written notice of the following promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof:

(a) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Borrower or any of their Subsidiaries would reasonably be expected to have a Material Adverse Effect;

(c) the occurrence of any ERISA Event or Foreign Plan Event that, individually or together with all other ERISA Events or Foreign Plan Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(d) the filing of any Lien for unpaid taxes in excess of $1,000,000;

(e) any change in the Borrower's chief executive officer or chief financial officer;

(f) any discharge, resignation or withdrawal of the registered public accounting firm (provided that filing an applicable 8-K with the SEC shall satisfy any notice requirements under clause (e) above or this clause (f));

(g) any Casualty Event, any Casualty Event (as defined in the ABL Credit Agreement) or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event or any Casualty Event (as defined in the ABL Credit Agreement), in each case involving assets with a fair market or book value in excess of $1,000,000;

(h) any change in the information provided in the Beneficial Ownership Certification, if any, delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(i) any other development specific to Holdings, the Borrower or any of their Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this Section 5.05 (i) shall be in writing and (ii) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and (if applicable) any action taken or proposed to be taken with respect thereto.

Section 5.06 Compliance with Laws. (a) Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; provided that this Section 5.06 shall not apply to Environmental Laws, which are the subject of Section 5.08, or to laws related to Taxes, which are the subject of Section 5.03, (b) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions and (c) comply with all applicable reporting requirements of the SEC.

Section 5.07 Maintaining Records; Access to Properties and Inspections.

(a) Maintain all financial records in a manner sufficient to permit the preparation of consolidated financial statements in accordance with GAAP.

(b) Permit the Administrative Agent, subject (except when an Event of Default exists) to reasonable advance notice to, and reasonable coordination with, the Borrower and 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 business, financial condition, assets and results of operations (it being understood that a representative of the Borrower is allowed to be present in any discussions with officers, employees, agent, advisors and independent accountants). 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. 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) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses (other than legal fees or costs and expenses which are covered under Section 9.05) of the Administrative Agent in connection with examinations of the Borrower's books and records or any other financial or Collateral matters as the Administrative Agent (acting at the direction of the Required Lenders) deems appropriate subject to the limitations on such examinations, audits and appraisals permitted under the preceding paragraph. This Section shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

Section 5.08 Compliance with Environmental Laws.

(a) Comply, and make reasonable efforts to cause all lessees and other Persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws. This clause (a) shall be deemed not breached by a noncompliance with the foregoing if, upon learning of such noncompliance, the Borrower and any

of its affected Subsidiaries promptly undertake reasonable efforts to eliminate such noncompliance, and such noncompliance and the elimination thereof, in the aggregate with any other noncompliance with any of the foregoing and the elimination thereof, could not reasonably be expected to have a Material Adverse Effect.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, generate, use, treat, store, release, dispose of, and otherwise manage Hazardous Materials in a manner that would not reasonably be expected to result in a material liability to the Borrower or any of the Subsidiaries or to materially affect any Real Property; and take reasonable efforts to prevent any other Person from generating, using, treating, storing, releasing, disposing of, or otherwise managing Hazardous Materials in a manner that could reasonably be expected to result in a material liability to, or materially affect any Real Property.

Section 5.09 Further Assurances; Additional Guarantors; Mortgages.

(a) Without limiting anything contained in this Section 5.09, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, financing statements, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any Applicable Law, or that the Administrative Agent (at the direction of the Required Lenders) may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure the perfection and priority of the Liens created or intended to be created by the Security Documents, all at the expense of the Loan Parties.

(b) If any asset (other than real property or improvements thereto or any interest therein) that has an individual fair market value in an amount greater than $1.0 million (as reasonably estimated by the Borrower) is acquired by Holdings, the Borrower or any Subsidiary Guarantor after the Closing Date or owned by an entity at the time it becomes a Subsidiary Guarantor (including, without limitation, as the result of a Division) (in each case other than assets constituting Collateral under a Security Document that become subject to a perfected Lien in favor of the Administrative Agent under such Security Document upon acquisition thereof or any Excluded Asset), cause such asset to be subjected to a perfected Lien securing the Obligations and take, and cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent (at the direction of the Required Lenders) to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties, subject to paragraph (f) below.

(c) Within sixty (60) days (or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may agree) following the the acquisition of Mortgageable Real Property, grant and cause each of the Subsidiary Guarantors to grant to the Administrative Agent security interests and mortgages in the Mortgageable Real Property of the Borrower or any such Subsidiary Guarantors specified in such request pursuant to Mortgages reasonably satisfactory to the Required Lenders and constituting valid and enforceable Liens subject to no other Liens except as are permitted by Section 6.02. With respect to each such Mortgage, the Borrower shall deliver (at its expense) to the Administrative Agent contemporaneously therewith all Real Property Documents requested by the Administrative Agent pursuant to the terms of this Agreement, other than those Real Property Documents which are to be obtained (at the Borrower's expense) by the Administrative Agent.

(d) If (i) any additional Subsidiary (other than an Excluded Subsidiary) is formed or acquired after the Closing Date (including, without limitation, as the result of a Division) or (ii) any Excluded Subsidiary ceases to be an Excluded Subsidiary pursuant to the definition thereof, concurrently with the formation or acquisition thereof or of such Subsidiary ceasing to be an Excluded Subsidiary, notify the Administrative Agent and the Lenders in writing thereof and, within ten (10) Business Days after such date or such longer period as the Administrative Agent (acting at the direction of the Required Lenders) shall agree, cause such Subsidiary to become a Subsidiary Guarantor by delivering a supplement to the Collateral Agreement, in the form specified therein, duly executed on behalf of such Subsidiary. Upon execution and delivery thereof, each such Person (x) shall automatically become a Subsidiary Guarantor under the Loan Documents and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (y) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral. In connection therewith, the Administrative Agent shall have received all documentation and other information regarding such newly formed or acquired Subsidiary as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act.

(e) (i) Furnish to the Administrative Agent promptly (and in any event within five (5) Business Days or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may agree) written notice of any change in (A) any Loan Party's corporate or organization name, (B) any Loan Party's organizational form or (C) any Loan Party's organizational identification number; provided that neither Holdings nor the Borrower shall effect or permit any such change unless all filings have been made, or will have been made within any applicable statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of the Secured Parties and (ii) promptly notify the Administrative Agent in writing if any material portion of the Collateral is damaged or destroyed.

(f) To the extent any improved real property is to be included in the Collateral, each Loan Party will, and will cause each Subsidiary to, execute and/or deliver, as applicable, such other documents as the Administrative Agent may reasonably request on behalf of any Lender that is a regulated financial institution or any Affiliate of such a Lender (each, a "Regulated Lender Entity"), in each case, to the extent such other documents are required for compliance by such Regulated Lender Entity with Applicable Law with respect to flood insurance diligence, documentation and coverage under all applicable Flood Insurance Laws. Prior to signing by the Loan Parties of any mortgage or deed of trust to secure the Secured Obligations, the applicable Loan Parties and the Administrative Agent shall have provided each Regulated Lender Entity requesting the same a copy of the life of loan flood zone determination relative to the property to be subject to such mortgage or deed of trust delivered to the Administrative Agent and copies of the other documents required by any such Regulated Lender Entity as provided in the preceding sentence and the Administrative Agent shall have received confirmation from each Regulated Lender Entity that flood insurance due diligence and flood insurance compliance has been satisfactorily completed by such Regulated Lender Entity (such confirmation not to be unreasonably withheld, conditioned or delayed, and shall be delivered promptly upon such completion by the applicable Regulated Lender Entity).

(g) At any time that any improved real property constitutes Collateral, no modification of a Loan Document shall extend the Maturity Date as to any Regulated Lender Entity hereunder until the Administrative Agent shall have received confirmation from each such Regulated Lender Entity that flood insurance due diligence and flood insurance compliance has been satisfactorily completed by such Regulated Lender Entity (such confirmation not to be unreasonably withheld, conditioned or delayed, and shall be delivered promptly upon such completion by the applicable Regulated Lender Entity).

(h) The provisions of this Section 5.09 with respect to the granting and perfection of security interests need not be satisfied with respect to (i) leasehold real property, (ii) Equity Interests of any Joint Ventures which cannot be pledged without the consent of one (1) or more third parties that is not an Affiliate of a Loan Party, (iii) Margin Stock, (iv) security interests to the extent the same would result in adverse tax consequences as reasonably determined by the Borrower and agreed to by the Administrative Agent (acting at the direction of the Required Lenders), (v) any property and assets the pledge of which would require governmental consent, approval, license or authorization (in each case, after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other Applicable Law), (vi) the General Unsecured Cash Fund so long as it is maintained in accordance with the Plan of Reorganization and (vii) all foreign intellectual property and any "intent-to-use" trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law (collectively, "Excluded Assets"). Notwithstanding anything to the contrary herein, (x) the Loan Parties shall not be required to grant a security interest in any Collateral or perfect a security interest in (A) any Collateral to the extent the burden or cost of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Borrower and the Administrative Agent (acting at the direction of the Required Lenders) or (B) in any contract, license or permit, if the granting of a security interest in such asset would be prohibited by enforceable anti-assignment provisions of contracts or Applicable Law or a pledge would violate the terms of any contract with respect to such assets (in each case, after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other Applicable Law) or would trigger termination pursuant to any "change of control" or similar provision in any contract and (y) the Administrative Agent's Lien in the following Collateral shall not be required to be perfected (A) motor vehicles and any other assets subject to state law certificate of title statutes, (B) commercial tort claims with an individual value not in excess of $1,000,000, (C) letter of credit rights to the extent not perfected by the filing of a financing statement under the Uniform Commercial Code and (D) Excluded Deposit Accounts.

Section 5.10 Fiscal Year; Accounting. In the case of Holdings and the Borrower, (i) cause its fiscal year to end on June 30 and (ii) prohibit any change to the accounting policies or reporting practices of the Loan Parties, except in accordance with GAAP.

Section 5.11 Casualty Events. Unless applied to prepay the Loans and other Obligations in accordance with Section 2.11, the Borrower and its Subsidiaries shall cause the Net Cash Proceeds of any Casualty Event to be reinvested or redeployed in their respective businesses within the Reinvestment Period by replacing properties or assets that are the subject of such Casualty Event in the ordinary course of business of Borrower and its Subsidiaries.

Section 5.12 Collateral Monitoring and Reporting.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) Administration of Deposit Accounts; Control Agreements.

(i) Schedule 5.12 sets forth all Deposit Accounts (including Excluded Deposit Accounts), securities accounts and commodities accounts maintained by the Loan Parties, including all Collateral Deposit Accounts, as of the Closing Date. Each Loan Party shall be the sole account holder of each Deposit Account (other than Excluded Deposit Accounts) and shall not allow any other Person (other than the ABL Administrative Agent and the Administrative Agent (which shall have a first priority interest in only those Deposit Accounts that are exclusively maintained for and contain only the identifiable proceeds of the Term Loan Priority Collateral)) to have control over a Deposit Account (other than Excluded Deposit Accounts) or any deposits therein. The Borrower (A) shall promptly notify the Administrative Agent of (x) any opening or closing of a Deposit Account (other than any Excluded Deposit Account) and (y) any Excluded Deposit Account ceasing to constitute an Excluded Deposit Account and (B) shall not open any Deposit Accounts (other than any Excluded Deposit Accounts) at a Bank not reasonably acceptable to the Administrative Agent.

(ii) On or before the Closing Date, (i) each Loan Party shall execute and deliver to the Administrative Agent Control Agreements for each Deposit Account (including the Term Loan Priority Collateral Account) maintained by such Loan Party (other than Excluded Deposit Accounts) and (ii) the Borrower shall establish the General Unsecured Cash Fund Deposit Account. After the Closing Date, each Loan Party shall comply with the terms of this Section 5.12(d).

(iii) Before opening or replacing any Deposit Account (other than Excluded Deposit Accounts), each Loan Party shall cause each bank or financial institution in which it seeks to open another such Deposit Account, to enter into a Control Agreement with the Administrative Agent in order to, subject to the Intercreditor Agreement, give the Administrative Agent Control of such Deposit Account.

(iv) The Borrower and its Subsidiaries shall cause all proceeds of Term Loan Priority Collateral to be remitted to a Deposit Account subject to a Control Agreement; provided that if such proceeds are received in connection with a Casualty Event or at any time an Event of Default has occurred and is continuing, such proceeds shall be remitted to the Term Loan Priority Collateral Account pending the application thereof to the Secured Obligations in accordance with the terms of this Agreement and the Intercreditor Agreement.

(v) Each Loan Party will provide (or with respect to securities accounts and commodities accounts existing on the Closing Date, will have provided) to the Administrative Agent a Control Agreement for each securities account and commodities account of such Loan Party promptly after the establishment or acquisition of any such account and prior to transferring or depositing any funds or other assets therein, duly executed on behalf of each financial institution or securities intermediary holding a securities account or commodities account, as applicable, of such Loan Party.

(vi) For the avoidance of doubt, nothing set forth in the Loan Documents shall prohibit (A) the establishment of the General Unsecured Cash Fund and General Unsecured Cash Fund Deposit Account, (B) repayment of amounts for

the benefit of the holders of Allowed General Unsecured Claims from the General Unsecured Cash Fund in accordance with the Plan of Reorganization or (C) the deposit of proceeds received by any Loan Party from the Plan Sale Leaseback and Rights Offerings into the General Unsecured Cash Fund Deposit Account in accordance with the Plan of Reorganization.

Section 5.13 Use of Proceeds. The Borrower will use the proceeds of the Loans (a) to pay fees, interest, payments (including funding a portion of the General Unsecured Cash Fund in accordance with the terms of the Plan of Reorganization) and expenses associated with the consummation of the Plan of Reorganization, and (b) to refinance the payments to be made to unsecured creditors and other claimants on the effective date of the Plan of Reorganization.

ARTICLE VI

Negative Covenants

Each of Holdings (solely as to Section 6.08(a)) and the other Loan Parties covenants and agrees with the Administrative Agent and each Lender that until the Secured Obligations (including any Prepayment Premium, if owed) are Paid in Full, unless the Required Lenders shall otherwise consent in writing, the Loan Parties will not and will not permit any of their Subsidiaries to (and Holdings as to Section 6.08(a), will not):

Section 6.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) Indebtedness pursuant to Swap Agreements not incurred for speculative purposes;

(c) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to the Borrower or any Subsidiary;

(d) Indebtedness of the Borrower owed to any Subsidiary and of any Subsidiary owed to the Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Subsidiary Guarantor owed to the Loan Parties is permitted under Section 6.04(b) and (ii) Indebtedness of the Borrower and of any other Loan Party owed to any Subsidiary that is not a Subsidiary Guarantor ("Subordinated Intercompany Debt") shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders);

(e) Indebtedness in respect of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Indebtedness in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);

(f) Indebtedness in respect of netting services, overdraft protection and similar arrangements incurred in the ordinary course of business in connection with cash management and deposit accounts;

(g) (x) Indebtedness assumed or acquired in connection with Permitted Business Acquisitions, which Indebtedness may be secured only by the assets acquired in connection with such Permitted Business Acquisitions or unsecured, and provided that (A) such Indebtedness exists at the time of such Permitted Business Acquisition and is not incurred in contemplation of such event and (B) any such Indebtedness does not exceed $5.0 million in the aggregate at any time outstanding and (y) any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; provided that in the case of clauses (x) and (y) if such Indebtedness is incurred by the Borrower or any Loan Party and secured with Term Loan Priority Collateral, such Indebtedness shall be secured only by a Junior Lien with respect to the Term Loan Priority Collateral pursuant to an intercreditor agreement satisfactory to the Administrative Agent (acting at the direction of the Required Lenders);

(h) Capital Lease Obligations, mortgage financings and purchase money Indebtedness (including any industrial revenue bond, industrial development bond and similar financings and excluding the Plan Sale Leaseback) incurred by the Borrower or any Subsidiary prior to or within two hundred seventy (270) days after the acquisition, lease, repair or improvement of the respective asset in order to finance such acquisition, lease, repair or improvement, and any Permitted Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount (together with Indebtedness outstanding pursuant to paragraph (i) of this Section 6.01) not to exceed $15.0 million at any one time outstanding;

(i) Capital Lease Obligations incurred by the Borrower or any Subsidiary in respect of any Sale and Lease-Back Transaction that is permitted under Section 6.03 and any Permitted Refinancing Indebtedness in respect thereof in an aggregate outstanding principal amount (together with Indebtedness outstanding pursuant to paragraph (h) of this Section 6.01) not to exceed $15.0 million at any one time outstanding;

(j) (i) Indebtedness of the Loan Parties constituting ABL Loan Obligations, in an aggregate outstanding principal amount not to exceed at any one time outstanding the sum of (A) $150.0 million, *plus* (B) the amount of Protective Advances (as defined in the ABL Credit Agreement) at such time made in accordance with the terms of the ABL Credit Agreement as in effect on the date hereof or as modified in accordance with the Intercreditor Agreement and (ii) Secured Swap Obligations and Secured Bank Product Obligations (each as defined in the ABL Credit Agreement);

(k) Guarantees (i) by the Loan Parties of the Indebtedness described in Section 6.01(j) and Section 6.01(o), (ii) by the Borrower or any Loan Party of any Indebtedness of any other Loan Party permitted to be incurred under this Agreement, (iii) by the Borrower or any Loan Party of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Subsidiary Guarantor, (iv) by any Subsidiary that is not a Loan Party of Indebtedness of Holdings and its Subsidiaries to the extent, in the case of clauses (iii) and (iv), such Guarantees are permitted by Section 6.04(b) or (j)(ii); provided that Guarantees by the Borrower or any Loan Party under this Section 6.01(k) of any other Indebtedness of a Person that is subordinated to the Obligations shall be expressly subordinated to the Obligations on terms not materially less favorable to the Lenders as those governing the subordination of such other Indebtedness to the Obligations; provided further that no Guarantee by Holdings or any of its Subsidiaries of any Subordinated Indebtedness or the Indebtedness described in Section 6.01(j) shall be permitted unless Holdings or the applicable Subsidiaries, as the case may be, shall have also provided a Guarantee of the Obligations under the Loan Documents on substantially the terms set forth in the applicable Guarantee of such Indebtedness or on terms acceptable to the Administrative Agent (acting at the direction of the Required Lenders);

(l) Indebtedness arising from agreements of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase or acquisition price or similar obligations (including without limitation earn-out obligations), in each case, incurred or assumed in connection with the acquisition or Disposition of any business or assets (including Equity Interests of Subsidiaries) of the Borrower or any Subsidiary permitted by Section 6.04 or Section 6.05, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business or assets for the purpose of financing such acquisition; provided that the aggregate maximum liability of the Borrower and its Subsidiaries in respect of any such Indebtedness does not exceed $10.0 million in the aggregate at any one time;

(m) [Reserved];

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) (i) additional Indebtedness of the Borrower or any Subsidiary and (ii) any Permitted Refinancing Indebtedness in respect thereof; provided that (x) after giving effect to such incurrence or issuance, no Event of Default shall have occurred and be continuing, (y) such Indebtedness shall be Subordinated Indebtedness that matures no earlier than the date that is, and has a Weighted

Average Life to Maturity no shorter than, at the time of such incurrence or issuance, ninety-one (91) days after the Maturity Date and (z) Indebtedness incurred under this Section 6.01(o) shall not exceed $5.0 million in the aggregate at any time outstanding;

(p) [Reserved];

(q) Indebtedness existing on the Closing Date and set forth on Schedule 6.01 and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness;

(r) Indebtedness not in respect of borrowed money supported by a letter of credit that is permitted hereunder, in a principal amount not in excess of the stated amount of such letter of credit;

(s) Indebtedness incurred by the Borrower and its Subsidiaries representing deferred compensation to directors, officers, employees, members of management and consultants of Holdings, any Parent Entity, the Borrower or any Subsidiary in the ordinary course of business in an aggregate amount at any one time outstanding not to exceed $10.0 million;

(t) Indebtedness consisting of promissory notes issued by the Borrower and its Subsidiaries to current or former directors, officers, employees, members of management or consultants of, Holdings, any Parent Entity, the Borrower or any Subsidiary (or their respective estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner) to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06(b) in an aggregate amount at any one time outstanding not to exceed $7.5 million;

(u) Indebtedness in respect of letters of credit, bankers' acceptances supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(v) Indebtedness arising out of the creation of any Lien (other than Liens securing debt for borrowed money) permitted under Section 6.02;

(w) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(x) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that they are permitted to remain unfunded under Applicable Law;

(y) other Indebtedness of any Borrower or any Subsidiary that is unsecured or secured by a Lien permitted under Section 6.02(y), in an aggregate outstanding principal amount not to exceed $5.0 million at any one time outstanding and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; and

(z) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness described in paragraphs (a) through (y) above.

Section 6.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests, evidences of Indebtedness or other securities of any Person) at the time owned by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrower and the Subsidiaries existing on the Closing Date and set forth on Schedule 6.02 and any refinancing, modification, replacement, renewal or extension thereof; provided, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof;

(b) any Lien (i) created under the Loan Documents and (ii) securing ABL Loan Obligations permitted by Section 6.01(j) so long as such Liens are at all times subject to the Intercreditor Agreement;

(c) any Lien securing Indebtedness or Permitted Refinancing Indebtedness permitted by Section 6.01(g), provided that such Lien (A) in the case of Liens securing Capital Lease Obligations and purchase money Indebtedness, applies solely to the assets securing such Indebtedness immediately prior to the consummation of the related Permitted Business Acquisition and after acquired property that is affixed to or incorporated in the assets securing such Indebtedness, to the extent required by the documentation governing such Indebtedness (without giving effect to any amendment thereof effected in contemplation of such acquisition or assumption), and the proceeds and products thereof (provided that individual financings provided by one (1) Person (or its Affiliates) otherwise permitted to be secured by Liens under this clause (c) may be cross-collateralized to other such financings provided by such Person (or its Affiliates)), (B) in the case of Liens securing Indebtedness other than Capital Lease Obligations or purchase money Indebtedness, such Liens do not extend to the property of any Person other than the Person acquired in such acquisition and the subsidiaries of such Person (and the Equity Interests in such Person), (C) in the case of clause (A) and clause (B), such Lien is not created in contemplation of or in connection with such acquisition or assumption, (D) in the case of a Lien securing Permitted Refinancing Indebtedness, any such Lien is permitted, subject to compliance with clause (e) of the definition of the term "Permitted Refinancing Indebtedness" and (E) in the case of any Indebtedness incurred by the Borrower or any Loan Party and secured with Term Loan Priority Collateral, such Indebtedness shall be secured only by a Junior Lien on such Term Loan Priority Collateral pursuant to an intercreditor arrangement satisfactory to the Administrative Agent (acting at the direction of the Required Lenders);

(d) Liens for Taxes, assessments or other governmental charges or levies which are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, which are being contested in accordance with Section 5.03;

(e) landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, which are being contested in accordance with Section 5.03;

(f) (i) pledges and deposits made (including to support obligations in respect of letters of credit, bank guarantees or similar instruments to secure) in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing premiums or liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations or otherwise as permitted in Section 6.01(c) and (ii) pledges and deposits securing liability for reimbursement or indemnification obligations of (including to support obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) insurance carriers in respect of property, casualty or liability insurance to the Borrower or any Subsidiary provided by such insurance carriers;

(g) (i) deposits to secure the performance of bids, trade contracts (other than for debt for borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business and (ii) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items set forth in clause (i) of this Section 6.02(g);

(h) zoning restrictions, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(i) Liens securing Capital Lease Obligations, mortgage financings, and purchase money Indebtedness or improvements thereto hereafter acquired, leased, repaired or improved by the Borrower or any Subsidiary (including the interests of vendors and lessors under conditional sale and title retention agreements); provided that (i) such security interests secure only Indebtedness permitted by Section 6.01(h) (including any Permitted Refinancing Indebtedness in respect thereof), (ii) such security interests are created, and the Indebtedness secured thereby is incurred, within two hundred seventy (270) days after such acquisition,

lease, completion of construction or repair or improvement (except in the case of any Permitted Refinancing Indebtedness), (iii) the Indebtedness secured thereby does not exceed the cost of such equipment or other property or improvements at the time of such acquisition or construction, including transaction costs (including any fees, costs or expenses or prepaid interest or similar items) incurred by the Borrower or any Subsidiary in connection with such acquisition or construction or material repair or improvement or financing thereof and (iv) such security interests do not apply to any other property or assets of the Borrower or any Subsidiary (other than to the proceeds and products of and the accessions to such equipment or other property or improvements but not to other parts of the property to which any such improvements are made; provided that individual financings provided by one (1) Person (or its Affiliates) otherwise permitted to be secured by Liens under this clause (i) may be cross-collateralized to other such financings provided by such Person (or its Affiliates)));

(j) Liens arising out of (i) Sale and Lease-Back Transactions permitted under Section 6.03 and (ii) any Indebtedness incurred in connection therewith permitted by Section 6.01(i) (and any Permitted Refinancing Indebtedness in respect thereof), so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds or products thereof and related property;

(k) Liens securing judgments that do not constitute an Event of Default under Section 7.01(j);

(l) [reserved];

(m) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by the Borrower or any Subsidiary in the ordinary course of business;

(n) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary, (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(p) Liens securing obligations in respect letters of credit permitted under Section 6.01(c), (e), (r) and (u);

(q) (i) leases, subleases, licenses or sublicenses of property in the ordinary course of business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;

(r) 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;

(s) Liens (i) solely on any cash earnest money deposits or Permitted Investments made by the Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Permitted Business Acquisition or other Investment permitted hereunder and (ii) consisting of an agreement to dispose of any property in a transaction permitted under Section 6.05;

(t) Liens arising from precautionary UCC financing statements (or similar filings under other Applicable Law) regarding operating leases or consignment or bailee arrangements;

(u) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under clause (c) of the definition thereof arising out of such repurchase transaction;

(v) (i) Liens on Equity Interests in Joint Ventures securing obligations of such Joint Venture and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements entered into in the ordinary course of business;

(w) Liens in favor of the Borrower or the Subsidiaries that are Loan Parties securing intercompany Indebtedness permitted under Section 6.04;

(x) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or the Subsidiaries in the ordinary course of business and (ii) arising by operation of law under Article 2 of the Uniform Commercial Code;

(y) Liens with respect to property or assets of any Borrower or any Subsidiaries securing Indebtedness permitted under Section 6.01(y); provided that (i) the aggregate principal amount of the Indebtedness or other obligations secured by such Liens does not exceed $5.0 million at any time outstanding and (ii) any such Liens on Term Loan Priority Collateral shall be Junior Liens;

(z) Liens on insurance policies and the proceeds thereof securing the financing of Indebtedness permitted pursuant to Section 6.01(n)(i);

(aa) ground leases in the ordinary course in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located; and

(bb) Liens in favor of the ABL Administrative Agent for the benefit of the ABL Secured Parties securing Cash Management Obligations (as defined in the ABL Credit Agreement) permitted by Section 6.01 of the ABL Credit Agreement.

Section 6.03 Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any fixed or capital assets, used or useful in its business, whether now owned or hereafter acquired, or, for the benefit of a Loan Party, direct or cause the sale or transfer of any fixed or capital assets, used or useful in its business to a Person and substantially contemporaneously rent or lease from the transferee or such Person such fixed or capital assets that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Lease-Back Transaction"), except for (a) the Plan Sale Leaseback and (b) any such sale of any fixed or capital assets acquired by the Borrower or any Subsidiary after the Closing Date that is permitted under Section 6.05(g) and is consummated within ninety (90) days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

Section 6.04 Investments, Loans and Advances. Purchase, hold or acquire any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, another Person, or make any Acquisition (each, an "Investment"), except:

(a) Investments among the Borrower and the Subsidiary Guarantors;

(b) Investments by the Borrower and the Subsidiary Guarantors in Subsidiaries that are not Subsidiary Guarantors; provided that (i) no Event of Default shall have occurred and be continuing at the time any such Investment is made and (ii) the sum of all such Investments (valued at the time of the making thereof and without giving effect to any write-downs or write-offs thereof, but net in the case of intercompany loans, and in any event, after giving effect to any returns, profits, distributions, and similar amounts, repayment of loans and the release of guarantees) made on or after the Closing Date shall not exceed an aggregate net amount equal to $5.0 million outstanding at any time; and provided further that intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries shall not be included in calculating the limitation in this paragraph at any time;

(c) Permitted Investments and investments that were Permitted Investments when made;

(d) Investments arising out of the receipt by the Borrower or any Subsidiary of promissory notes and other non-cash consideration for Dispositions permitted under Section 6.05 (excluding clauses (a), (b), (d), (e), (f)(i), (j), (k), (p), (r), (u), and (v) of Section 6.05);

(e) (i) loans and advances to directors, officers, employees, members of management or consultants of Holdings (or any Parent Entity), the Borrower or any Subsidiary in the ordinary course of business not to exceed $1.0 million in the aggregate at any time outstanding (calculated without regard to write-downs or write-offs thereof) and (ii) advances of payroll payments and expenses to directors, officers, employees, members of management or consultants in the ordinary course of business;

(f) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the ordinary course of business;

(g) Investments under Swap Agreements permitted pursuant to Section 6.01;

(h) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 6.04 and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except by terms thereof or as otherwise permitted by this Section 6.04;

(i) Investments resulting from pledges and deposits permitted by Section 6.02(b)(ii), (f) and (g);

(j) Investments (i) constituting Permitted Business Acquisitions and (ii) by any Subsidiary that is not a Subsidiary Guarantor in any other Subsidiary that is not a Subsidiary Guarantor;

(k) Guarantees (i) permitted by Section 6.01(k) and (ii) of leases (other than Capital Lease Obligations) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(l) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the ordinary course of business;

(m) [reserved;]

(n) [reserved;]

(o) Investments in Holdings in amounts and for purposes for which Restricted Payments to Holdings would have been permitted under Section 6.06, in lieu of such Restricted Payments;

(p) to the extent constituting Investments, (i) Sale and Lease-Back Transactions, (ii) Restricted Payments, and (iii) prepayments and repurchases of Indebtedness expressly permitted under Section 6.03 and/or 6.06;

(q) so long as no Default or Event of Default shall have occurred any be continuing, Investments made in cash by the Borrower or any Subsidiary in an outstanding aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed $7.5 million, (plus any returns, profits, distributions and similar amounts, and the repayments of loans in respect of Investments theretofore made by it pursuant to this paragraph (q));

(r) other Investments (other than Guarantees) made in cash by the Borrower or any Subsidiary not to exceed $2.0 million during the term of this Agreement; and

(s) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers; and

(t) Investments to the extent the consideration paid therefor consists solely of Equity Interests of any Parent Entity not resulting in a Change in Control.

Notwithstanding anything to the contrary in this Agreement, in no event shall any Loan Party make any Investment consisting of, or otherwise contribute or transfer, any Material Intellectual Property to any Person that is not a Loan Party other than to the extent constituting non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the Term Loan Priority Collateral or the business of the Borrower and its Subsidiaries.

Section 6.05 Mergers, Consolidations and Dispositions. Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or Dispose of (in one (1) transaction or in a series of related transactions) all or any part of its assets (whether now owned or hereafter acquired), or Dispose of any Equity Interests of any Subsidiary of the Borrower (including pursuant to any Division), except that this Section shall not prohibit:

(a) (i) the Disposition of inventory and equipment in the ordinary course of business by the Borrower or any Subsidiary, (ii) the Disposition of surplus, obsolete, used or worn out property (other than Inventory), whether now owned or hereafter acquired, in the ordinary course of business by the Borrower or any Subsidiary, (iii) the leasing or subleasing of real property in the ordinary course of business by the Borrower or any Subsidiary or (iv) the Disposition of Permitted Investments in the ordinary course of business;

(b) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (i) the merger of any Subsidiary of Holdings (which shall either be (A) newly formed expressly for the purpose of such transaction and which owns no assets, (B) Intermediate Holdings or (C) a Subsidiary of the Borrower) into the Borrower in a transaction in which the Borrower is the surviving or resulting entity or the surviving or resulting Person expressly assumes the obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders) (for the avoidance of doubt, the Borrower shall not be permitted to consummate a Division), (ii) the merger or consolidation of any Subsidiary with or into any other Subsidiary; provided that in any such merger or consolidation involving any Subsidiary Guarantor, a Subsidiary Guarantor shall be the surviving or resulting Person, (iii) the liquidation or dissolution of any Subsidiary (other than the Borrower) if the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and the assets of such liquidating or dissolving Subsidiary are transferred to the Borrower or a Subsidiary Guarantor, or (iv) the merger of Parent and Intermediate Holdings (or the dissolution or consolidation of Intermediate Holdings);

(c) Dispositions among the Borrower and the Subsidiary Guarantors (upon voluntary liquidation or otherwise);

(d) [reserved];

(e) to the extent constituting a Disposition, Liens permitted by Section 6.02, Investments permitted by Section 6.04 (other than Section 6.04(p)), and Restricted Payments permitted by Section 6.06 (other than Section 6.06(e));

(f) Dispositions of receivables in the ordinary course of business (i) not as part of an accounts receivables financing transaction or (ii) in connection with the collection, settlement or compromise thereof in a bankruptcy or similar proceeding;

(g) Dispositions by the Borrower or any Subsidiary of assets not otherwise permitted by this Section 6.05; provided that the consideration for any Disposition shall be at least 75% cash consideration (provided that for purposes of the 75% cash consideration requirement (w) the amount of any Indebtedness or other liabilities of the Borrower or any Subsidiary (as shown on such Person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection and substantially contemporaneously with such Disposition, and (y) any securities received by such Subsidiary from such transferee that are converted by such Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) substantially contemporaneously following the closing of the applicable Disposition, in each case, shall be deemed to be cash); provided further that immediately prior to and after giving effect to such Disposition, no Event of Default shall have occurred or be continuing; provided further that, Dispositions made pursuant to this Section 6.05(g) shall not exceed $2.5 million in aggregate in any fiscal year;

(h) Dispositions by the Borrower or any Subsidiary of assets that were acquired in connection with an acquisition permitted hereunder (including, without limitation, Permitted Business Acquisitions); provided that any such sale, transfer, lease or other disposition shall be made or contractually committed to be made within two hundred seventy (270) days of the date such assets were acquired by the Borrower or such Subsidiary; and provided further that, Dispositions made pursuant to this Section 6.05(h) shall not exceed $2.5 million in aggregate in any fiscal year;

(i) any merger or consolidation in connection with an Investment permitted under Section 6.04; provided that (i) if the continuing or surviving Person is a Loan Party or a Subsidiary of a Loan Party, such Loan Party or Subsidiary shall have complied with its obligations under Section 5.09 (if any), and (ii) if the Borrower is a party thereto, the Borrower shall be the continuing or surviving Person or the continuing or surviving Person shall assume the obligations of the Borrower in a manner reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders);

(j) licensing and cross-licensing arrangements involving any technology or other intellectual property of the Borrower or any Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of or materially detracting from the value of the business of the Borrower and its Subsidiaries;

(k) Dispositions of Inventory or other property of the Borrower and the Subsidiaries determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or any of its Subsidiaries, provided that, Dispositions made pursuant to this Section 6.05(k) shall not exceed $5.0 million in aggregate in any fiscal year;

(l) [reserved];

(m) the issuance of Qualified Capital Stock by the Borrower;

(n) sales of Equity Interests of any Subsidiary of the Borrower; provided that, in the case of the sale of the Equity Interests of a Subsidiary Guarantor, the purchaser shall be the Borrower or another Subsidiary Guarantor or such transaction shall fit within another clause of this Section 6.05 or constitute an Investment permitted by Section 6.04 (other than Section 6.04(p));

(o) Dispositions 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, transfer, lease or other disposition are promptly applied to the purchase price of such replacement property, provided that, Dispositions made pursuant to this Section 6.05(o) shall not exceed $5.0 million in aggregate in any fiscal year;

(p) leases, subleases, licenses or sublicenses of property (other than intellectual property) in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Subsidiaries;

(q) Dispositions of property subject to casualty or condemnation proceeding (including in lieu thereof) upon receipt of the net proceeds therefor;

(r) Dispositions of property in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and the Subsidiaries;

(s) Dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in, joint venture arrangements and similar binding arrangements;

(t) [reserved];

(u) terminations of Swap Agreements;

(v) the expiration of any option agreement in respect of real or personal property;

(w) [reserved];

(x) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business;

(y) [reserved];

(z) any change in form of entity of any Subsidiary if the Borrower determines in good faith that such change in form is in the best interests of the Borrower; provided that the Borrower and such Subsidiary shall substantially concurrently with such change in form take all actions necessary, if any, to preserve the perfection of the Administrative Agent's Lien on the Equity Interests in and Property of such Subsidiary (other than any Excluded Assets);

(aa) as long as no Event of Default then exists or would arise therefrom, bulk sales or other dispositions of the Loan Parties' Inventory outside of the ordinary course of business in connection with store closings that are conducted on an arm's-length basis and not to an Affiliate; provided that such store closures and related Inventory dispositions shall not exceed, in any fiscal year 20.0% of the number of the Loan Parties' stores as of the beginning of such fiscal year (net of store relocations wherein a binding lease has been entered into for a new store opening prior to the related store closure date); provided, further, that all sales of Inventory in connection with store closings shall be paid to a Deposit Account that is subject to a Control Agreement; and

(bb) the Plan Sale Leaseback in accordance with the Plan of Reorganization.

Notwithstanding anything to the contrary contained above in this Section 6.05, (i) no Disposition or series of related Dispositions in excess of $1.0 million shall be permitted by this Section 6.05 (other than Dispositions pursuant to paragraphs (a)(ii), (b), (c), (i), (k), (r), (s), (u), or (v)) unless such Disposition is for fair market value (as reasonably determined by the Borrower), (ii) no Disposition shall be permitted by paragraphs (k) or (aa) of this Section 6.05 without receiving at least 75% cash consideration for each such Disposition, (iii) no Disposition or series of related Dispositions in excess of $1.5 million shall be permitted by paragraph (h) of this Section 6.05 unless such Disposition is for at least 75% cash consideration; provided that for purposes of the 75% cash consideration requirement in the foregoing clause (iii), (w) the amount of any Indebtedness or other liabilities of the Borrower or any Subsidiary (as shown on such Person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection and substantially contemporaneously with such Disposition and (y) any securities received by such Subsidiary from such transferee that are converted by such Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) substantially contemporaneously with the closing of the applicable Disposition, in each case, shall be deemed to be cash, (iv) [reserved], and (v) in no event shall (x) any Loan Party Dispose of any Material Intellectual Property to any Person that is not a Loan Party other than to the extent constituting non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the Term Loan Priority Collateral or the business of the Borrower and its Subsidiaries or (y) any Subsidiary that is not a Loan Party own or develop any Material Intellectual Property.

Section 6.06 Dividends and Distributions. Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any Equity Interests of the Borrower (other than dividends and distributions on such Equity Interests payable solely by the issuance of additional Equity Interests of the Borrower) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any Equity Interests of the Borrower or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests of the Person redeeming, purchasing, retiring or acquiring such shares) (a "Restricted Payment"); provided, however, that:

(a) the Borrower may make Restricted Payments in cash as shall be necessary to allow Holdings (or any Parent Entity) (i) to pay operating expenses in the ordinary course of business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management and consultants of Holdings (or any Parent Entity) directly attributable and reasonably allocated to the ownership or operations of Holdings, the Borrower and the Subsidiaries), (ii) to pay fees and expenses related to any debt or equity offering, investment or acquisition permitted hereunder (whether or not successful) and (iii) to pay franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of the Borrower and in order to permit Holdings to make payments (other than cash interest payments) which would otherwise be permitted to be paid by the Borrower under Section 6.07(b);

(b) the Borrower may make Restricted Payments in the form of cash or, to the extent permitted by Section 6.01(t), unsecured Indebtedness consisting of promissory notes, the proceeds of which are used to purchase or redeem the Equity Interests of Holdings or any Parent Entity (including related stock appreciation rights or similar securities) held by then present or former directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) or by any Plan, in each case, pursuant to and in accordance with stock option plans or other benefit plans for management or employees, provided that the aggregate amount of such Restricted Payments under this paragraph (b) shall not exceed $2.5 million in any fiscal year, which, if not used in any year, may be carried forward to the next subsequent fiscal year;

(c) repurchases of Equity Interests in Holdings (or any Parent Entity), the Borrower or any Subsidiary deemed to occur upon exercise of stock options or similar Equity Interests if such repurchased Equity Interests represent a portion of the exercise price of such options or taxes to be paid in connection therewith;

(d) the Borrower and any Subsidiary of the Borrower may make Restricted Payments in cash to any direct or indirect member of an affiliated group of corporations that files a consolidated U.S. federal tax return with the Borrower (the "Tax Distributions"), provided that, such Tax Distributions shall not exceed the excess of (i) the amount that the Borrower or such Subsidiaries would have been required to pay in respect of federal, state or local taxes, as the case may be, in respect of such year if the Borrower or such Subsidiaries had paid such taxes directly as a stand-alone taxpayer or stand-alone group and (ii) the portion of such federal, state or local taxes that is directly paid by the Borrower or such Subsidiaries;

(e) to the extent constituting a Restricted Payment, the Borrower and the Subsidiaries may enter into transactions expressly permitted by Section 6.05(b) or (m);

(f) the proceeds of which shall be used by Holdings to make (or to make a Restricted Payment to any Parent Entity to enable it to make) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of Holdings or any Parent Entity;

(g) payments made by the Borrower or any of its Subsidiaries in cash in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management or consultants of the Borrower (or any Parent Entity) or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of the foregoing) and any repurchases of Equity Interests in consideration for such payments including demand repurchases in connection with the exercise of stock options;

(h) the Borrower may make Restricted Payments to Holdings in cash so long Restricted Payments made under this Section 6.06(h) do not exceed $2.0 million during the term of this Agreement;

(i) redemptions, repurchases, retirements or other acquisitions of Equity Interests of the Borrower or any Parent Entity in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Subsidiary) of, Equity Interests of the Borrower or any Parent Entity (to the extent the proceeds of such sale are contributed to the capital of the Borrower) (in each case, other than any Equity Interests issued or sold that are not Qualified Capital Stock) ("Refunding Capital Stock"); and

(j) the Rights Offering;

provided that, notwithstanding anything to the contrary herein, no Loan Party may make any Restricted Payment consisting of any Material Intellectual Property.

Section 6.07 Transactions with Affiliates.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates, unless such transaction is (i) otherwise permitted (or required) under this Agreement and (ii) upon terms no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate.

(b) The foregoing paragraph (a) shall not prohibit,

(i) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Entity,

(ii) loans or advances to directors, officers, employees, members of management or consultants of Holdings, the Borrower or any of its Subsidiaries permitted by Section 6.04,

(iii) transactions among the Loan Parties, in each case otherwise permitted by the Loan Documents,

(iv) the payment of fees and indemnities to directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower and the Subsidiaries in the ordinary course of business,

(v) permitted agreements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect,

(vi) (A) any employment or severance agreements or arrangements entered into by the Borrower or any of the Subsidiaries in the ordinary course of business, (B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors, members of management or consultants, and (C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto,

(vii) Restricted Payments permitted under Section 6.06,

(viii) any purchase by Holdings of or contributions to, the equity capital of the Borrower,

(ix) [reserved],

(x) any transaction in respect of which the Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of the Borrower from an accounting, appraisal or investment banking firm, in each case of nationally recognized standing, which letter states that such transaction is on terms that are no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate (such letter, a "Fairness Opinion"),

(xi) the Transactions and the other transactions contemplated by the Plan of Reorganization to the extent consummated substantially in accordance with the Plan of Reorganization, including the payment of all fees, expenses, bonuses and awards (including Transaction Costs) related thereto,

(xii) Guarantees permitted by Section 6.01,

(xiii) the issuance and sale of Qualified Capital Stock,

(xiv) [reserved], and

(xv) the indemnification of directors, officers, employees, members of management or consultants of any Parent Entity, the Borrower and its Subsidiaries in accordance with customary practice.

In the event the Borrower or any of its Subsidiaries proposes to consummate any transaction with an Affiliate (other than a transaction permitted under Section 6.07(b)) involving aggregate consideration of at least $30.0 million, the Borrower shall, prior to the consummation of such transaction, deliver a Fairness Opinion with respect to such transaction to the Administrative Agent.

Section 6.08 Business of Holdings, the Borrower and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than:

(a) in the case of Holdings, (i) ownership and acquisition of Equity Interests in Intermediate Holdings or the Borrower, as applicable, together with activities directly related thereto, (ii) performance of its obligations under and in connection with the Loan Documents (and Permitted Refinancing Indebtedness in respect thereof), (iii) actions incidental to the consummation of the Transactions (including the payment of Transaction Costs), (iv) the performance of its obligations after the Closing Date in respect of guaranteeing Indebtedness or obligations of the Borrower and its Subsidiaries, (v) the payment by Holdings, directly or indirectly, of dividends or other distributions (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests, or directly or indirectly redeeming, purchasing, retiring or otherwise acquiring for value any of its Equity Interests or setting aside any amount for any such purpose, (vi) actions required by law to maintain its existence, (vii) the payment of taxes and other customary obligations, (viii) the issuance of Equity Interests, and (ix) activities incidental to its maintenance and continuance and to the foregoing activities, or

(b) in the case of the Borrower and any Subsidiary, any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Notwithstanding anything to the contrary contained in herein, Holdings shall not sell, dispose of, grant a Lien on or otherwise transfer its Equity Interests in Intermediate Holdings or the Borrower, as applicable (other than (i) Liens created by the Security Documents, (ii) subject to the relevant intercreditor agreement, Liens created by the ABL Loan Documents, (iii) Liens arising by operation of law that would be permitted under Section 6.02 or (iv) the sale, disposition or other transfer (whether by purchase and sale, merger, consolidation, liquidation or otherwise) of the Equity Interests of the Borrower to any Parent Entity that becomes a Loan Party and agrees to be bound by this Section 6.08 contemporaneously with the consummation of such transaction).

Section 6.09 Limitation on Modification of Indebtedness; Modification of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) (i) Amend or modify in any manner materially adverse to the Lenders or the Administrative Agent, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders or the Administrative Agent), the articles or certificate of incorporation or by-laws or limited liability company operating agreement of Holdings, the Borrower or any of the Subsidiary Guarantors or (ii) amend, modify or otherwise change, or consent or agree to any amendment, modification, waiver or other change to any ABL Loan Document to the extent that any such amendment, modification, waiver or other change would be prohibited by the terms of the Intercreditor Agreement; or

(b) Make, or agree to make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the ABL Loan Obligations) or unsecured Indebtedness for borrowed money (including any Indebtedness incurred under

Section 6.01(o)), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of such Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the ABL Loan Obligations) or unsecured Indebtedness for borrowed money (except for (i) Refinancings otherwise permitted by Section 6.01, (ii) any AHYDO "catch up" payments and (iii) the conversion of any Subordinated Indebtedness, Indebtedness secured by a Junior Lien (other than the ABL Loan Obligations) or unsecured Indebtedness for borrowed money to Qualified Capital Stock of Holdings or any Parent Entity (each such payment or distribution, a "Restricted Debt Payment")).

(c) Permit the Borrower or any Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to (or the repayment of cash advances from) the Borrower or any Subsidiary or (ii) the granting of Liens on Collateral pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(i) restrictions imposed by Applicable Law;

(ii) (A) contractual encumbrances or restrictions in effect on the Closing Date or contained in any agreements related to any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness, or (B) any such encumbrances or restrictions in any ABL Loan Documents or Permitted Refinancing Indebtedness in respect thereof, in each case so long as the scope of such encumbrance or restriction is no more expansive in any material respect than any such encumbrance or restriction in effect on the Closing Date (or the date of issuance as the case may be), or any agreement (regardless of whether such agreement is in effect on the Closing Date) providing for the subordination of Subordinated Intercompany Debt;

(iii) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the Disposition of all or substantially all the Equity Interests or assets of such Subsidiary pending the closing of such sale or disposition;

(iv) customary provisions in Joint Venture agreements and other similar agreements applicable to Joint Ventures entered into in the ordinary course of business;

(v) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(vi) customary provisions contained in leases, subleases, licenses or sublicenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(vii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(viii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(ix) customary restrictions and conditions contained in any agreement relating to any Disposition permitted under Section 6.05 pending the consummation of such Disposition;

(x) customary restrictions and conditions contained in the document relating to any Lien, so long as (A) such Lien is permitted under Section 6.02 and such restrictions or conditions relate only to the specific asset subject to such Lien and the proceeds and products thereof, and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(xi) customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations;

(xii) any agreement in effect at the time such Person becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary;

(xiii) restrictions contained in any documents documenting Indebtedness permitted hereunder of any Subsidiary that is not a Subsidiary Guarantor or required to become a Subsidiary Guarantor.

(d) [Reserved].

(e) In the case of any Loan Party, agree to, or incur, any Contractual Obligation which would prohibit such Loan Party from providing, or continuing to provide, a Guarantee of the Obligations.

Section 6.10 [Reserved].

Section 6.11 Use of Proceeds. The Borrower will not request any Loan, and the Borrower shall not use, and shall procure that Holdings, its Subsidiaries and its or their respective directors, officers, employees and agents shall not use directly or indirectly, the proceeds of any Loan (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 or any Sanctions, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.12 Foreign Subsidiaries. Neither Holdings nor the Borrower shall form or acquire any Foreign Subsidiary.

Section 6.13 Anti-Layering. The Loan Parties shall not, directly or indirectly, create, incur, assume, permit to exist or otherwise become or remain liable with respect to any Indebtedness, (i) that is secured by Liens that are contractually subordinated to Liens securing any ABL Loan Obligations or (ii) that is subordinated or junior in lien priority or right of payment to any portion of the ABL Loan Obligations unless (a) the Liens securing such Indebtedness are also subordinated or (b) the Indebtedness is junior in lien priority or right of payment, in each case, as applicable, in the same manner and to the same extent in all material respects, as the Liens securing the Obligations are subordinated to the Liens securing the ABL Loan Obligations or the right of payment is subordinated to the ABL Loan Obligations, as applicable.

ARTICLE VII

Events of Default

Section 7.01 Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by any Loan Party in any Loan Document, or in any certificate or other instrument required to be given by any Loan Party in writing furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made pursuant to the terms of the Loan Documents or so furnished by such Loan Party;

(b) default shall be made in the payment of any principal or interest of any Loan or Prepayment Premium when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any fee or any other amount (other than an amount referred to in paragraph (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in Sections 5.05(a), 5.07, 5.11, 5.12(c) or in Article VI;

(e) default shall be made in the due observance or performance by Holdings, the Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (A) written notice

thereof from the Administrative Agent or the Required Lenders to the Borrower or (B) any Responsible Officer of a Loan Party obtaining knowledge of such breach or default;

(f) (i) any event or condition occurs that (A) results in any Material Indebtedness (other than the ABL Loan Obligations) becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders any Material Indebtedness (other than the ABL Loan Obligations) or any trustee or agent on its or their behalf to cause any such Material Indebtedness (other than the ABL Obligations) to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) Holdings, the Borrower, or any of the Subsidiaries shall fail to pay the principal of any Material Indebtedness (other than the ABL Loan Obligations) at the stated final maturity thereof; provided that this paragraph (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder; provided, further, that any such failure is unremedied and not waived by the holders of such Indebtedness prior to the acceleration of the Loans pursuant to this Section 7.01;

(g) there shall have occurred a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Holdings, the Borrower or any such Subsidiary, or of a substantial part of the property or assets of Holdings, the Borrower or any material Subsidiary, under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any such Subsidiary or for a substantial part of the property or assets of Holdings, the Borrower or any such Subsidiary or (iii) the winding-up or liquidation of Holdings, the Borrower or any such Subsidiary (except, in the case of any such Subsidiary, in a transaction permitted by Section 6.05); and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings, the Borrower or any Subsidiary, shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any such Subsidiary or for a substantial part of the property or assets of Holdings, the Borrower or any such Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) the failure by Holdings, the Borrower or any Subsidiary to pay one (1) or more final judgments aggregating in excess of $7.5 million (to the extent not covered by third-party insurance as to which the insurer has been notified of such judgment and does not deny coverage), which judgments are not discharged or effectively waived or stayed for a period of sixty (60) consecutive days, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of Holdings, the Borrower or any Subsidiary to enforce any such judgment;

(k) (i) an ERISA Event and/or a Foreign Plan Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Plan(s) or (iii) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such Person does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect;

(l) (i) any Loan Document shall for any reason cease to be, or shall be asserted in writing by Holdings, the Borrower or any Subsidiary not to be, a legal, valid and binding obligation of any party thereto, (ii) any security interest purported to

be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrower and the Subsidiaries on a consolidated basis shall cease to be, or shall be asserted in writing by Holdings, the Borrower or any other Loan Party not to be (other than in a notice to the Administrative Agent to take requisite actions to perfect such Lien), a valid and perfected security interest (perfected as and having the priority required by the Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent (x) any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement, (y) such loss is covered by a lender's title insurance policy as to which the insurer has been notified of such loss and does not deny coverage and the Required Lenders shall be reasonably satisfied with the credit of such insurer or (z) such loss of perfected security interest may be remedied by the filing of appropriate documentation without the loss of priority or (iii) the Guarantees pursuant to the Security Documents by Holdings, the Borrower or the Subsidiary Guarantors of any of the Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by Holdings or the Borrower or any Subsidiary Guarantor not to be in effect or not to be legal, valid and binding obligations;

(m) except as otherwise expressly permitted hereunder, the Borrower and its Subsidiaries (taken as a whole) shall suspend the operation of their business in the ordinary course at more than 60.0% of the Loan Parties' stores for a period of more than 30 consecutive days (other than to the extent such suspension is a direct result of (i) the COVID-19 pandemic or governmental or court orders issued in connection therewith; provided that, solely in the case of this clause (i), such suspension occurs prior to the first anniversary of the Closing Date, or (ii) war, riot, civil insurrection, or natural disaster (e.g., tornadoes or earthquakes), in each case, to the extent the consequences of such events or circumstances are not having a disproportionate impact on the Borrower and its Subsidiaries (taken as a whole) when compared to other similarly situated companies), liquidate all or a material portion of their assets or store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of their business;

(n) a material breach by the Borrower of any of its material obligations under the Plan of Reorganization or any material agreement contemplated thereby, including with respect to its obligations to the holders of Allowed General Unsecured Claims, which breach remains unremedied for a period of thirty (30) days; or

(o) there shall occur and be continuing (i) an "Event of Default" in respect of any ABL Loan Obligations as a result of non-payment of such ABL Obligations upon final scheduled maturity therefor or (ii) any "Event of Default" in respect of any ABL Obligations and as a result thereof, the applicable holders of such ABL Loan Obligations have caused or declared all or a material portion of such ABL Loan Obligations to become immediately due and payable; provided that this paragraph (o) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder.

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) above), and at any time thereafter during the continuance of such event, the Required Lenders may, upon notice to the Borrower (with a copy to the Administrative Agent), declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon, any prepayment premium (including the Prepayment Premium, if owed) and any unpaid accrued fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and with respect to any event described in paragraph (h) or (i) above, the principal of the Loans then outstanding, together with accrued interest thereon, any premiums (including the Prepayment Premium, if owed) and any unpaid accrued fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 7.02 Allocation. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, monies to be applied to the Secured Obligations (including the Prepayment Premium, if owed), whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses (including extraordinary expenses) and other amounts, owing to the Administrative Agent, in its capacity as such;

(b) second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders, ratably among them in proportion to the amounts described in this clause second payable to them;

(c) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, other Obligations, and fees and any premiums (including the Prepayment Premium, if owed), ratably among the Lenders in proportion to the respective amounts described in this clause third payable to them;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause fourth held by them; and

(e) last, the balance, if any, after all of the Obligations have been paid in full, to the Loan Parties or as otherwise required by Applicable Law.

Amounts shall be applied to each category of Secured Obligations set forth above until such Secured Obligations (including the Prepayment Premium, if owed) are paid in full or cash collateralized, as applicable and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Secured Obligations (including the Prepayment Premium, if owed) in the category.

ARTICLE VIII

The Administrative Agent

Section 8.01 Appointment, Authority and Duties of the Administrative Agent.

(a) Appointment and Authority. Each Secured Party hereby irrevocably appoints and designates Alter Domus (US) LLC as the Administrative Agent under all Loan Documents and Alter Domus (US) LLC hereby accepts such appointments. The Administrative Agent may, and each Secured Party authorizes the Administrative Agent to, enter into all Loan Documents to which the Administrative Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by the Administrative Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by the Administrative Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (ii) execute and deliver as the Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Loan Party or other Person; (iii) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (iv) manage, supervise or otherwise deal with Collateral; and (v) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. No Secured Party shall have any right individually to take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of the Administrative Agent shall be ministerial and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto.

(b) Duties. The Administrative Agent shall not have any duties except those expressly set forth herein and in the other Loan Documents. The conferral upon the Administrative Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement.

(c) Agent Professionals. The Administrative Agent may perform its duties through agents and employees. The Administrative Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional.

(d) Instructions of Required Lenders. The rights and remedies conferred upon the Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. The Administrative Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by the Administrative Agent in connection with any act or failure to act. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 7.01 and 9.08), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific Lenders or Secured Parties shall be required to the extent provided in Section 9.08(b). In no event shall the Administrative Agent be required to take any action that, in its opinion or the in the opinion of its counsel, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

Section 8.02 Agreements Regarding Collateral and Field Examination Reports.

(a) Possession of Collateral. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(b) Reports. Each Lender hereby agrees that (i) it has requested a copy of each Report prepared on behalf of the Administrative Agent (at the direction of the Required Lenders); (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to review, update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.03 Reliance By the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall not incur any liability in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and

statements of Agent Professionals. The Administrative Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any such delay in acting. 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 any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent.

Section 8.04 Action Upon Default. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Article IV, unless it has received written notice, conspicuously marked as a "notice of default", from the Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify the Administrative Agent and the other Lenders thereof in writing. Each Secured Party agrees that it will not take any Enforcement Action, accelerate Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

Section 8.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the the facilities provided for herein as well as activities as the Administrative Agent. The Administrative 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 or willful misconduct in the selection of such sub agents.

Section 8.06 Limitation on Responsibilities of the Administrative Agent. The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.05 unless and until written notice thereof stating that it is a "notice under Section 5.05" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower or a Lender. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report, Report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral. Except as expressly set forth herein and in the other Loan Documents, the Administrative Agent shall not have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any Loan Party that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Section 8.07 Successor Administrative Agent and Co-Collateral Agents.

(a) Resignation; Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by giving at least 30 days' written notice thereof to Lenders and the Borrower or the Administrative Agent may be replaced as Administrative Agent by the Lenders at the direction of the Required Lenders upon five (5) Business Days' (or such shorter time period as agreed to by the Required Lenders and the Administrative Agent) prior written notice to the Administrative Agent, the other Lenders and Borrower. Upon receipt of such notice, Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Administrative Agent which shall be (i) (A) a Lender or an Affiliate of a Lender; (B) a commercial bank, financial institution or a trust company that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least $1,000,000,000; or (C) a professional agent and (ii) provided that no Event of Default exists under Sections 7.01(b), 7.01(h), 7.01(i) (with respect to the Borrower only) and 7.01(o), subject to the approval of the Borrower (not to be unreasonably withheld, conditioned or delayed). If no successor agent is appointed prior to the date that is 30 days from the effective date of the resignation of the Administrative Agent, then the Administrative Agent may appoint a successor agent from among the Lenders or, if no Lender accepts such role, the Administrative Agent may appoint Required Lenders as successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall nevertheless become effective on the 30th day from the effective date of the resignation of the Administrative Agent. Upon acceptance by a successor Administrative Agent of an appointment to serve as the Administrative Agent hereunder, or upon appointment of Required Lenders as successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. Notwithstanding any Administrative Agent's resignation or replacement, the provisions of this Article VIII, Section 5.07(c) and Section 9.05 shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while the Administrative Agent. Any successor to Alter Domus (US) LLC by merger or acquisition of stock or this loan shall continue to be the Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

(b) Separate Collateral Administrative Agent. It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If the Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, the Administrative Agent may appoint, subject to the approval of the Borrower (such approval not to be unreasonably withheld or delayed), an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If the Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to the Administrative Agent under the Loan Documents shall also be vested in such separate agent. The parties acknowledge that the ABL Administrative Agent may be acting as collateral agent for the Administrative Agent and the Lenders with respect to ABL Priority Collateral and, to such extent, the Administrative Agent hereby appoints the ABL Administrative Agent to act in such capacity. Secured Parties shall execute and deliver such documents as the Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by the Administrative Agent until appointment of a new agent.

Section 8.08 Acknowledgements of Lenders.

(a) Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem

appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Acceptance or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date or the effective date of any such Assignment and Acceptance or any other Loan Document pursuant to which it shall have become a Lender hereunder.

Section 8.09 Remittance of Payments and Collections.

(a) Remittances Generally. All payments by any Lender to the Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified, payment shall be made by Lender not later than 2:00 p.m. (Local Time) on such day. Payment by the Administrative Agent to any Secured Party shall be made by wire transfer, in the type of funds received by the Administrative Agent. Any such payment shall be subject to the Administrative Agent's right of offset for any amounts due from such payee under the Loan Documents.

(b) Failure to Pay. If any Secured Party fails to pay any amount when due by it to the Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by the Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrower be entitled to receive credit for any interest paid by a Secured Party to the Administrative Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by the Administrative Agent pursuant to Section 2.21.

(c) Recovery of Payments. If the Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by the Administrative Agent from a Loan Party and such related payment is not received, then the Administrative Agent may recover such amount from each Secured Party that received it. If the Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, the Administrative Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by the Administrative Agent to any Secured Obligations are later required to be returned by the Administrative Agent pursuant to Applicable Law, each Lender shall pay to the Administrative Agent, on demand, such Lender's Pro Rata share of the amounts required to be returned.

Section 8.10 [Reserved].

Section 8.11 [Reserved].

Section 8.12 [Reserved].

Section 8.13 Survival. This Article VIII shall survive Payment in Full of the Obligations (including the Prepayment Premium, if owed). Other than Sections 8.01, 8.04 and 8.07, this Article VIII does not confer any rights or benefits upon Borrower or any other Person. As between Borrower and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

Section 8.14 Withholding Tax. To the extent required by any Applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.17, each Lender shall indemnify and hold harmless the Administrative Agent against, within 10 days after written demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of 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). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all

amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 8.14. The agreements in this Section 8.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations (including the Prepayment Premium, if owed).

Section 8.15 Indemnification.

(a) The Lenders agree to indemnify and hold harmless the Administrative Agent in its capacity as such (to the extent not reimbursed by Holdings or the Borrower and without limiting the obligation of Holdings or the Borrower to do so), each in an amount equal to its pro rata share (based on the respective principal amounts of its applicable outstanding Loans; provided, that if all Loans have been Paid in Full, then each Lender's pro rata share shall be determined as of the date immediately preceding the date that the Loans were Paid in Full) thereof, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of, the Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct; provided, however, that no action taken or omitted from being taken by the Administrative Agent at the direction of the Required Lenders shall constitute gross negligence or willful misconduct. The agreements in this Section 8.15 shall survive the Payment in Full of the Loans and all other amounts payable hereunder and the termination of this Agreement.

(b) To the extent that the Borrower is unable to pay, due to the limitations in the Intercreditor Agreement on Permitted Term Loan Obligation Payments (as defined in the Intercreditor Agreement), the fees owed to the Administrative Agent in accordance with the Administrative Agent Fee Letter and Section 2.07 hereof, the Lenders hereby agree to pay to the Administrative Agent, ratably, in accordance with each Lender's pro rata share (based on the respective principal amounts of its applicable outstanding Loans), within ten (10) days of demand therefor, all amounts owed to the Administrative Agent in the Administrative Agent Fee Letter. Amounts paid by the Lenders this sub-section (b) constitute Obligations. Nothing in this sub-section (b) shall prevent the Lenders from seeking reimbursement in the next succeeding calendar year from the Borrower under Section 9.04(a) hereof for, and Borrower hereby agrees to reimburse Lenders for, the payment of such Administrative Agent's fee.

Section 8.16 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 Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans 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 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 and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans 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 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 Loan 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 and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 8.17 Flood Insurance Laws. Pursuant to the Flood Insurance Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous

Section 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission, (including by ".pdf" or ".tif") pursuant to the terms of this Agreement, as set forth on Schedule 9.01.

(b) Notices and other communications to the Borrower, any Loan Party and the Lenders hereunder may be delivered or furnished by Electronic Systems or other electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or other electronic communications pursuant to procedures approved by it; provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service, sent by fax or (to the extent permitted by paragraph (b) above) electronic means or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01.

(d) Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Survival of Agreement. All representations and warranties made by the Loan Parties herein and in the other Loan Documents shall be considered to have been relied upon by the Lenders and shall survive the making of the Loans and the execution and delivery of the Loan Documents, and shall continue in full force and effect until the Maturity Date. Without prejudice to the survival of any other agreements contained herein, obligations for taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities contained herein (including pursuant to Sections 2.15, 2.17 and 9.05) shall survive the payment in full of the principal and interest hereunder, and the termination of the Commitments or this Agreement, limited in the manner set forth herein.

Section 9.03 Binding Effect; Effectiveness. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, the Administrative Agent and each Lender and their respective permitted successors and assigns.

Section 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as otherwise permitted by Section 6.05 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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, Participants (to the extent provided in paragraph (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in clause (c) below, any Lender may assign to one (1) or more Eligible Assignees (other than to any natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(i) the Borrower, provided that no consent of the Borrower shall be required (i) if an Event of Default has occurred and is continuing and (ii) if such assignment is to a Lender, an Affiliate of a Lender or a Related Fund in respect of a Lender; and

(ii) [reserved].

(c) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an affiliate of a Lender or Related Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Borrower) shall not be less than $1.0 million, unless each of the Borrower and the Required Lenders otherwise consent, provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Related Funds, if any;

(ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.; and

(iii) the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, all applicable tax forms required to be delivered by a Lender pursuant to Section 2.17(e) and all "know your customer" documentation requested by the Administrative Agent.

(d) Upon the acceptance and recording thereof pursuant to clause (f) below and subject to clause (k) below, Assignment and Acceptance the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05 as well as any fees accrued for its account and not yet paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 (g) of this Section 9.04.

(e) 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 Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may 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 and any Lender (with respect to any entry related to such Lender's Loans), at any reasonable time and from time to time upon reasonable prior written notice. The parties hereto agree and intend that the Obligations shall be treated as being in "registered form" for the purposes of the Code (including Code Sections 163(f), 871(h)(2), 881(c)(2), and 4701), and the Register shall be maintained in accordance with such intention.

(f) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire (unless the Eligible Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (c)(ii) above and any applicable tax forms required pursuant to Section 2.17(e), and any written consent to such assignment required by clause (b) above, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (f).

(g) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to one (1) or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans 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 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 pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that such agreement 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 directly affected thereby pursuant to Section 9.04(a)(i) or clauses (i) through (vi) of the first proviso to Section 9.08(b). Subject to paragraph (h) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations with respect thereto) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant shall be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the 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.

(h) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(e) as though it were a Lender.

(i) Any Lender may at any time, without the consent of or notice to the Administrative Agent or the Borrower, pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to a natural person) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee (including any Eligible Assignee) for such Lender as a party hereto.

(j) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(k) If any assignment or participation under this Section 9.04 is made (or attempted to be made) to the extent the Borrower's consent is required under the terms of this Section 9.04, to any other Person without the Borrower's consent, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (A) terminate the Commitments of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender or participant as of such termination date (in the case of any participation in any Loan, to be applied to such participation), or (B) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the lesser of par or the amount such Lender paid for such Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) such assignment shall otherwise comply with this Section 9.04 (provided that no registration and processing fee referred to in this Section 9.04 shall be owing in connection with any assignment pursuant to this paragraph). Nothing in this Section 9.04(k) shall be deemed to prejudice any rights or remedies the Borrower may otherwise have at law or equity.

Section 9.05 Expenses; Indemnity.

(a) The Borrower agrees to pay within thirty (30) days of demand thereof (together with backup documentation supporting such request) (i) all reasonable and documented (in summary format) out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent and the Lenders in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent or the Lenders in connection with the syndication of the Commitments or the administration of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower and the reasonable and documented (in summary format) out-of-pocket fees, disbursements and charges for no more than one (1) outside counsel to the Administrative Agent (selected by the Administrative Agent) and one (1) outside counsel for the Lenders taken as a whole (selected by the Required Lenders) and, if necessary one (1) local counsel in each material jurisdiction where Collateral is located for each of the Administrative Agent (selected by the Administrative Agent) and the Lenders taken as a whole (selected by the Required Lenders)) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby contemplated shall be consummated) and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made hereunder (but limited, in the case of legal fees and expenses, to the actual reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of one (1) outside counsel to the Administrative Agent (selected by the Administrative Agent) and one (1) outside counsel for the Lenders taken as a whole (selected by the Required Lenders), and,

if reasonably necessary (x) the reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of one (1) local counsel per relevant local jurisdiction for each of the Administrative Agent (selected by the Administrative Agent) and the Lenders taken as a whole (selected by the Required Lenders) and (y) in the case of an actual or potential conflict of interest, the reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of one (1) additional counsel to all affected Persons, taken as a whole).

(b) The Borrower agrees to indemnify, on a joint and several basis, the Agent Indemnitees, and each Lender and each of their respective Related Parties, successors and assigns and the directors, trustees, officers, employees, advisors, controlling Persons and agents of each of the foregoing (each such Person being called a "Lender Indemnitee" ; together with each Agent Indemnitee, an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented (in summary format) out-of-pocket costs and related expenses (including reasonable and documented (in summary format) out-of-pocket fees, charges and disbursements of outside counsel to the Administrative Agent (selected by the Administrative Agent) and outside counsel for the Lenders taken as a whole (selected by the Required Lenders) and, if necessary, one (1) local counsel in each relevant local jurisdiction for each of the Administrative Agent (selected by the Administrative Agent) and the Lenders taken as a whole (selected by the Required Lenders) and, in the case of an actual or potential conflict of interest, and one (1) additional counsel to all affected Indemnitees, taken as a whole) incurred by or asserted against any Indemnitee arising out of, relating to, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions (including the payment of the Transaction Costs) and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or costs or related expenses (x) are determined in a final nonappealable judgment of a court of competent jurisdiction to have resulted by reason from the gross negligence, bad faith or willful misconduct of, or material breach by, such Indemnitee, (y) arise out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties) against another Indemnitee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Administrative Agent, acting in its capacity as Administrative Agent) that does not involve any act or omission of the Borrower or any of its Subsidiaries and arises out of disputes among the Lenders and/or their transferees. The Borrower shall not be liable to any Lender Indemnitee for any settlement of any proceeding referred to in this Section 9.05 effected without the Borrower's written consent (such consent not to be unreasonably withheld or delayed); provided, however, that the Borrower shall indemnify the Indemnitees from and against any loss or liability by reason of such settlement if the Borrower was offered the right to assume the defense of such proceeding and did not assume such defense or such proceeding was settled with the written consent of the Borrower, subject to, in each case, the Borrower's right in this Section 9.05 to claim an exemption from such indemnity obligations. The Borrower shall indemnify the Indemnitees from and against any final judgment for the plaintiff in any proceeding referred to in this Section 9.05, subject to the Borrower's right in this Section 9.05 to claim an exemption from such indemnity obligations. The Borrower shall not, without the prior written consent of any Lender Indemnitee, effect any settlement of any pending or threatened proceeding in respect of which such Lender Indemnitee is a party and indemnity could have been sought hereunder by such Lender Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee (and its Related Parties) from all liability or claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Lender Indemnitee (or its Related Parties).

(c) To the extent permitted by Applicable Law, each party hereto hereby waives for itself (and, in the case of the Borrower, for each other Loan Party) any claim against any Loan Party, any Lender Party and their respective affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto (and in the case of the Borrower on behalf of each other Loan Party) hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that

nothing contained in this sentence shall limit the Borrower's indemnity obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim in connection with which such indemnified Person is entitled to indemnification hereunder. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations (including the Prepayment Premium, if owed), the termination of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent or any Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(d) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to Section 2.17, this Section 9.05 shall not apply to Taxes other than Taxes arising from a non-Tax claim.

(e) Notwithstanding the foregoing paragraphs in this Section 9.05, if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action, proceeding or investigation that any loss, claim, damage, liability or cost or related expense of any Indemnitee has resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee (or any of its Related Parties) or a material breach of the Loan Documents by such Indemnitee (or any of its Related Parties), such Indemnitee will repay such portion of the reimbursed amounts previously paid to such Indemnitee under this Section 9.05 that is attributable to expenses incurred in relation to the set or omission of such Indemnitee which is the subject of such finding.

(f) To the extent permitted by Applicable Law, neither the Borrower nor any Loan Party shall assert, and the Borrower and each Loan Party hereby waives, any claim against any Lender Party, and any Related Party of any of the foregoing Persons for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet).

Section 9.06 Right of Set-off. If an Event of Default shall have occurred and be continuing, upon the written consent of the Required Lenders, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of Holdings, the Borrower or any Subsidiary Guarantor (and such Lender will provide prompt notice to such Loan Party) against any of and all the obligations of Holdings or the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

Section 9.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 9.08 Waivers; Amendment.

(a) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (A) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent and the Required Lenders and (B) in the case of any other Loan Document, pursuant to

an agreement or agreements in writing entered into by each party thereto and consented to by the Required Lenders; provided, however, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity date of, or decrease the rate of interest on, any Loan, or any fees or other amounts payable thereunder (including any Prepayment Premium, if owed) without the prior written consent of each Lender directly and adversely affected thereby; provided, that (x) consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (i) and (y) that waiver or reduction of a post-default increase in interest shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender),

(ii) increase the Commitment of any Lender without the prior written consent of such affected 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 Commitments of any Lender),

(iii) extend the Commitment of any Lender without the prior written consent of such Lender, as applicable (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default, mandatory prepayments or of a mandatory reduction in the aggregate Commitments shall not constitute an increase or extension of maturity); provided, that consent of Required Lenders shall not be required for any waiver, amendment or modification contemplated by this clause (iii),

(iv) except to the extent necessary to give effect to the express intentions of this Agreement (including Sections 2.22 and 9.04), which, in respect of any amendment or modification to effect such express intentions, shall be effective with the consent of the Required Lenders, amend or modify the provisions of Section 2.18(b) or (c) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender,

(v) amend or modify the provisions of Section 7.02, Sections 9.08(a), (b) or (c) or reduce the voting percentage set forth in the definition of "Required Lenders" without the prior written consent of each Lender directly and adversely affected thereby, or

(i) (x) release all or substantially all the Collateral (it being understood that a transaction permitted under Section 6.05 shall not constitute a release of all or substantially all of the Collateral), or release all or substantially all of the value of the Guarantees (except as otherwise permitted herein (including in connection with a transaction permitted under Section 6.05) or in the other Loan Documents) under the Collateral Agreement, unless, in the case of a Subsidiary Guarantor, all or substantially all the Equity Interests of such Subsidiary Guarantor is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender or (y) subordinate the Liens of the Administrative Agent under the Security Documents with respect to all or substantially all of the Collateral (other than in respect of ABL Priority Collateral in accordance with the provisions of the Loan Documents as in effect on the date hereof or pursuant to Section 9.17) or subordinate the Obligations (including any Prepayment Premium, if owed) hereunder, without the prior written consent of each Lender, provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or Lender hereunder without the prior written consent of the Administrative Agent or such Lender acting as such at the effective date of such agreement. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any successor or assignee of such Lender.

(c) Notwithstanding anything to the contrary contained in this Agreement, all discretionary determinations, waivers and consents that are referred to in this Agreement or the Loan Document (including whenever in this Agreement or any of the other Loan Documents the words "judgment", "discretion", "determination", "satisfactory", "acceptable", or "agreed" or words of similar import are used) as being satisfactory (or reasonably satisfactory) to the Administrative Agent or requiring the Administrative Agent's discretion, waiver or consent (including whenever in this Agreement or any of the other Loan Documents the words "consent",

"approval", "satisfaction", "establishment" or words of similar import), shall mean for all purposes herein and in the Loan Documents that such discretionary determinations, waivers and consents must be satisfactory (or reasonably satisfactory) to the Required Lenders and requiring the Required Lenders' discretion, waiver and consent (or, in each case, the Administrative Agent at the direction of the Required Lenders), including without limitation any amendments, waivers or consents, determinations as to whether any applicable documentation (including intercreditor or subordination agreements) or other deliverable hereunder is in form and substance satisfactory (or reasonably satisfactory) to the Administrative Agent (which must be in form and substance satisfactory (or reasonably satisfactory) to the Required Lenders), determinations as to collateral and guaranty matters and extensions of time periods in order to comply with the terms of this Agreement.

Section 9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate on any Loan, together with all fees and charges that are treated as interest under Applicable Law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with Applicable Law, the rate of interest payable hereunder, together with all Charges payable to such Lender shall be limited to the Maximum Rate, provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

Section 9.10 Entire Agreement. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Administrative Agent Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto, and their respective successors and assigns permitted hereunder, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 9.11 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 9.12 Severability. In the event any one (1) or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13 Counterparts; Electronic Execution.

(a) This Agreement may be executed in multiple counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which, when taken together, shall constitute but one (1) contract, and shall become effective as provided in Section 9.03.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document, any assignment, and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender Party for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.15 Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents,

or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Lender Party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against Holdings, the Borrower or any Loan Party or their properties in the courts of any jurisdiction.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each of the parties hereto agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested at its address provided in Section 9.01 agrees that service as so provided in is sufficient to confer personal jurisdiction over the applicable credit party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and agrees that agents and lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any credit party in the courts of any other jurisdiction.

Section 9.16 Confidentiality. Each Lender Party agrees that it shall maintain in confidence any information relating to Holdings, the Borrower and the other Loan Parties furnished to it by or on behalf of Holdings, the Borrower or the other Loan Parties (other than information that (a) has become generally available to the public other than as a result of a disclosure by any such party, (b) was already in possession on a non-confidential basis for a person not known to the recipient to be bound by confidentiality obligations to Parent or any Subsidiary thereof or has been independently developed by such Lender Party without violating this Section 9.16 or relying on any such information, (c) was available to such Lender Party from a third party having, to such Person's knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Loans on behalf of such Lender (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 9.16 and such Lender Party shall be responsible for its Affiliates' compliance with this Section except to the extent such Affiliate shall sign a written confidentiality agreement in favor of the Borrower), except: (i) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, self-regulatory authorities (including the National Association of Insurance Commissioners) or of any securities exchange on which securities of the disclosing party or any affiliate of the disclosing party are listed or traded (in which case such Lender Party will promptly notify the Borrower, in advance, to the extent permitted by Applicable Law or the rules governing the process requiring such disclosure (except with respect to any routine or ordinary course audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority) and shall use its commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (ii) as part of the reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (iii) to its parent companies, affiliates, auditors, assignees, transferees and participants (so long as each such Person shall have been instructed to keep the same confidential in accordance with provisions not less restrictive than this Section 9.16 and such Lender Party shall be responsible for its Affiliates' compliance with this Section), (iv) in order to enforce its rights under any Loan Document in a legal proceeding (in which case it shall use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (v) to any pledgee under Section 9.04(d) or any other existing or prospective assignee of, or existing or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 9.16 or other provisions at least as restrictive as this Section 9.16), (vi) to any direct or indirect contractual counterparty in Swap Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16), and (vii) with the consent of the Borrower. In addition, the Administrative Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents and any Swap Agreement to which a Lender Party is a party.

Section 9.17 Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, assigns, transfers or otherwise disposes of any assets or all of the Equity Interests of any Subsidiary Guarantor to a Person that is not (and is not required to become) a Loan Party in each case in a transaction expressly permitted by Section 6.05, the Administrative Agent (acting at the direction of the Required Lenders) shall promptly take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower's expense to release any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of all of the Equity Interests of any Subsidiary Guarantor in a transaction expressly permitted by Section 6.05, terminate such Subsidiary Guarantor's obligations under its Guarantee. Any representation, warranty or covenant contained in any Loan Document relating to any such Equity Interests, asset or subsidiary of Holdings shall no longer be deemed to be made once such Equity Interests or asset is so conveyed, sold, leased, assigned, transferred or disposed of. At the request of the Borrower, the Administrative Agent (acting at the direction of the Required Lenders) shall promptly (i) subordinate any Lien granted to the Administrative Agent (or any sub-agent or collateral agent) under any Loan Document to the holder of any Lien on such property that is permitted by Sections 6.02(c) (solely in the case of Liens securing Capital Lease Obligations and purchase money Indebtedness), (i), (j), and (aa) and (ii) enter into intercreditor arrangements contemplated by (or amendments to the Security Documents to effect the arrangement contemplated by) Sections 6.01(g), (j) and (y), Sections 6.02(b), (c) and (y), and the definition of "Permitted Refinancing Indebtedness."

Section 9.18 USA PATRIOT Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA PATRIOT Act.

Section 9.19 Marshalling; Payments Set Aside. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or the Administrative Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause for any reason, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred. The provisions of this Section 9.19 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 9.19 shall survive the termination of this Agreement.

Section 9.20 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 9.21 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap 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 Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

Section 9.22 Acknowledgements. Each Loan Party hereby acknowledges and agrees that (a) no fiduciary, advisory or agency relationship between the Loan Parties and the Lender Parties is intended to be or has been created in respect of any of the transactions contemplated by this Agreement or the other Loan Documents, irrespective of whether the Lender Parties have advised or are advising the Loan Parties on other matters, and the relationship between the Lender Parties, on the one hand, and the Loan Parties, on the other hand, in connection herewith and therewith is solely that of creditor and debtor, (b) the Lender Parties, on the one hand, and the Loan Parties, on the other hand, have an arm's length business relationship that does not directly or indirectly give rise to, nor do the Loan Parties rely on, any fiduciary duty to the Loan Parties or their affiliates on the part of the Lender Parties, (c) the Loan Parties are capable of evaluating and understanding, and the Loan Parties understand and accept, the terms, risks and conditions of the transactions contemplated by this Agreement and the other Loan Documents, (d) the Loan Parties have been advised that the Lender Parties are engaged in a broad range of transactions that may involve interests that differ from the Loan Parties' interests and that the Lender Parties have no obligation to disclose such interests and transactions to the Loan Parties, (e) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent the Loan Parties have deemed appropriate in the negotiation, execution and delivery of this Agreement and the other Loan Documents, (f) each Lender Party has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by it and the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, any of their affiliates or any other Person, (g) none of the Lender Parties has any obligation to the Loan Parties or their affiliates with respect to the transactions contemplated by this Agreement or the other Loan Documents except those obligations expressly set forth herein or therein or in any other express writing executed and delivered by such Lender Party and the Loan Parties or any such affiliate and (h) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lender Parties or among the Loan Parties and the Lender Parties.

Section 9.23 [Reserved].

Section 9.24 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable Law).

Section 9.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions(a).

(b) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document 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:

(i) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(ii) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) 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 9.26 Intercreditor Agreement. This Agreement and the other Loan Documents are subject to the terms and conditions set forth in the Intercreditor Agreement in all respects and, in the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Administrative Agent or the ABL Administrative Agent, as applicable, pursuant to any Loan Document or ABL Loan Document, and the exercise of any right or remedy in respect of the Collateral by the Administrative Agent or the ABL Administrative Agent, as applicable hereunder, under any other Loan Document, or under the ABL Credit Agreement and any other agreement entered into in connection therewith are subject to the provisions of the Intercreditor Agreement and in the event of any conflict between the terms of the Intercreditor Agreement, this Agreement, any other Loan Document, the ABL Credit Agreement and any other agreement entered into in connection therewith, the terms of the Intercreditor Agreement shall govern and control with respect to the exercise of any such right or remedy or the Loan Parties' covenants and obligations. In addition, all payments required to be made by the Loan parties hereunder (whether in respect of principal, interest, fees or otherwise) are subject to the provisions of the Intercreditor Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

TUESDAY MORNING, INC.

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

TUESDAY MORNING CORPORATION

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

TMI HOLDINGS, INC.

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

ALTER DOMUS (US) LLC,
as Administrative Agent

By: /s/ Jon Kirschmeier
Name: Jon Kirschmeier
Title: Associate Counsel

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

CEOF Holdings LP,
as a Lender

By: /s/ Daniel Friedman
Name: Daniel Friedman
Title: General Counsel of Corbin Capital Partners, LP., as it's Investment Manager

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

Foxhill Opportunity Fund, L.P.,
as a Lender

By: /s/ Neil Weiner
Name: Neil Weiner
Title: Managing Partner

OSMIUM CAPITAL, LP

OSMIUM CAPITAL II, LP

OSMIUM SPARTAN, LP

OSMIUM DIAMOND, LP

as a Lender

By: /s/ John H. Lewis
Name: John H. Lewis
Title: Authorized Person

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

TENSILE CAPITAL PARTNERS MASTER FUND LP
as a Lender

By: /s/ Douglas J. Dossey
Name: Douglas J. Dossey
Title: Authorized Person

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

Schedule 9.01(a)

If to any Loan Party, to

Tuesday Morning, Inc.
6250 LBJ Freeway, Dallas, Texas 75240
Attention: Stacie Shirley, Steven R. Becker
Telecopier: (972) 934-7231
Electronic Address: sshirley@tuesdaymorning.com, sbecker@tuesdaymorning.com

with a copy to

Haynes and Boone, LLP
2323 Victory Ave., Suite 700, Dallas, Texas 75219
Attention: Ian Peck
Electronic Address: ian.peck@haynesboone.com

If to the Administrative Agent, to
Alter Domus (US) LLC
225 W. Washington St., 9th Floor
Chicago, Illinois 60606
Attention: Legal Department and Steve Lenard
Telecopier: 312-376-0751
Electronic Address: legal@alterdomus.com and cpcagency@alterdomus.com

with a copy, which shall not constitute notice, to

Holland & Knight LLP
150 N. Riverside Plaza, Suite 2700
Chicago, Illinois 60606
Attention: Joshua Spencer
Electronic Address: joshua.spencer@hklaw.com;

If to Tensile Capital Management LLC and its affiliates, to

Tensile Capital Management LLC
700 Larkspur Landing Circle, Suite 255
Larkspur, CA 94939
Attention: Douglas J. Dossey
Telecopier: (415) 830-8178
Electronic Address: DDossey@tensilecapital.com

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with a copy, which shall not constitute notice, to

Kirkland & Ellis LLP
555 California St, San Francisco, CA 94104
Attention: Katrina Levy and Nisha Kanchanapoomi
Electronic Address: Katrina.Levy@kirkland.com, Nisha.Kanchanapoomi@kirkland.com

If to Osmium Capital, LP and its affiliates, to

Osmium Capital, LP
300 Drakes Landing Road #172
Greenbrae, CA 94904
Attention: John H. Lewis
Telecopier: (415) 747-8979
Electronic Address: jl@osmiumpartners.com

If to CEOF Holdings LP and its affiliates, to

CEOF Holdings LP
c/o Corbin Capital Partners, L.P.
590 Madison Avenue, 31st Floor
New York, NY 10022
Attention: Corbin Operations
Telecopier: (212) 634-7399, duplicate copies to (212) 651-2377 and (866) 381-1484
Electronic Address: corbinwso-fax@ifs.statestreet.com; mmf-bankdebt@corbincapital.com; corbin@viteos.com; corbinNAV@statestreet.com; corbinwso@statestreet.com

If to Foxhill Opportunity Fund, L.P. and its affiliates, to

Foxhill Opportunity Fund, L.P.
c/o Foxhill Capital Partners, LLC
2141 A1A
Suite 450
Jupiter, FL 33477
Attention: Ravena Khan
Electronic Address: ravena@foxhillcapital.com

If to any other Lender, to it at the address, fax number or electronic address set forth in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto.

[Signature Page to Term Loan Credit Agreement (Tuesday Morning)]

Exhibit 10.3

LEASE AGREEMENT

This **SHORT TERM LEASE** (this **"Lease"**) is entered into as of the 31st day of December, 2020, by and between 6250 LBJ Freeway, LP, a Texas limited partnership (**"Landlord"**) and TUESDAY MORNING, INC., a Texas corporation (**"Tenant"**).

1. **Lease Grant and Term**. Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the real property as described in the legal description attached hereto as Exhibit A (together with any improvements thereon) located at 6250 LBJ Freeway, Dallas, Texas (the **"Premises"** or the **"Property"**). The term of this Lease (the **"Term"**) shall commence on the date first set forth above (the **"Commencement Date"**) and shall continue until 5:00 p.m. (Central Standard Time) on the date that is one hundred twenty (120) months following the Commencement Date (**"Termination Date"**).

2. **Permitted Use; Operation**. Tenant shall use the Premises for general office use, together with any incidental purposes thereto, and for no other purpose. Tenant will ensure that Tenant's use of the Premises complies with all laws, ordinances, rules and regulations of governmental authorities and all matters of record affecting the Premises, now or hereafter in effect.

3. **Rent Payments**. During the Term, Tenant agrees to pay to Landlord a monthly sum equal to $67,761.67 (the **"Fixed Rental"**). All Fixed Rental payments shall be due and payable, in advance, on or before the first day of each succeeding calendar month during the Term. Fixed Rental for any fractional month during the Term shall be prorated based on the current Fixed Rental for each day of the partial month this Lease is in effect. For the avoidance of doubt, Tenant has no monetary obligations to Landlord under this Lease unless expressly provided otherwise in this Lease. Tenant may (i) send Fixed Rental Payments to the following address: P.O. Box 471369, Fort Worth, Texas 76147, or (ii) elect to wire Fixed Rental Payments (or pay via Automated Clearing House), in which case Landlord shall provide wiring instructions to Tenant. Commencing on the first (1^{st}) anniversary of the Commencement Date and continuing each anniversary date thereafter during the Term, the Fixed Rental amount shall be increased by two percent (2.0%) over the prior year's Fixed Rental amount. Notwithstanding anything to the contrary contained herein, this Lease is an absolute net lease. It is the intention of Landlord and Tenant that the Fixed Rental and other sums and charges provided herein shall be absolutely net to Landlord and that such amounts shall be paid without setoff, abatement, deduction, reduction, except as otherwise expressly permitted by this Lease.

4. **Late Fees; Interest**. In the event that a Fixed Rental payment is not received by Landlord within five (5) days of the date it is due, Tenant may be assessed a late fee by Landlord of 2.5% of the amount due; provided, however, no such late fee shall be owed unless such late payment continues for a period of five (5) days after written notice to Tenant (but Tenant shall only be entitled to one such notice in any calendar year, and thereafter during such calendar year any such payment not paid within five (5) days of its due date shall trigger such late payment without the requirement of additional notice).

5. **Reserved**.

6. **Maintenance, Repair, and Replacement; Surrender**. Excluding damage by casualty or condemnation, which are governed elsewhere in this Lease, Tenant, at its sole cost and expense, shall maintain and repair in their current condition, reasonable wear and tear excepted, the Premises (including the roof, foundation, exterior walls and other structural elements) and equipment and systems within the Premises (including generators, lighting, electrical, plumbing, hydraulics, mechanical, heating, ventilating and air conditioning), all driveways, parking areas, landscaping, and other improvements located on the Premises, which maintenance and repair shall be in Tenant's reasonable discretion, and may include replacement of such equipment, systems, or structural elements of the Property if replacement is required in Tenant's reasonable discretion. During the Term of this Lease, Landlord shall have no obligations with respect to the maintenance or repair (including replacement) of the Premises, all of such obligations being assumed by Tenant, except as otherwise expressly provided herein. Landlord may make any repairs to the Premises upon thirty (30) days advance written notice to Tenant (or such shorter period of time if Landlord reasonably determines the failure to immediately repair will result in material long-term damage to the Premises (or any part thereof), or would cause injury or harm to human health, in Landlord's reasonable judgment), so long as Landlord uses commercially reasonable efforts to minimize interference with Tenant's business operating in exercising its rights hereunder. In the event that Landlord is required to make any repairs to the Premises to correct a condition or state of facts which if not corrected would

result in long-term material damage to the Premises (or any material part thereof), or would cause injury or harm to human health, in Landlord's reasonable judgment and Tenant fails to commence and diligently pursue such repair within ten (10) days' of receipt of notice thereof (or with respect to an emergency condition, within five (5) days' of receipt of notice thereof), Tenant shall reimburse Landlord for all of Landlord's out-of-pocket costs in making such repair within ten (10) days following Landlord's invoice therefor. Landlord shall indemnify and hold harmless Tenant for any actual, out-of-pocket costs, expenses or losses which Tenant incurs due to Landlord's, its agents or contractors' negligence or willful misconduct in connection with any repairs done by Landlord or on behalf of Landlord at the Premises. Notwithstanding anything to the contrary, at the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in the then-existing condition of the Premises. Tenant and Landlord shall schedule a walk-through inspection of the Premises at least thirty (30) days in advance of the expiration date of the Lease. Landlord shall have the right to identify which furniture and any other tangible personal property on the Premises that Landlord requires Tenant to remove at the time Tenant vacates the Premises. In the event that Tenant fails to remove such identified property by the expiration or termination of this Lease, then such property shall be considered abandoned and, at Landlord's election, be deemed the property of Landlord (except for any tangible personal property utilized by Tenant pursuant to easements, leases, or licenses, provided that if such property is not removed by the expiration of the Lease Term, Landlord shall have the right to remove the same at Tenant's reasonable expense), and Landlord shall have the option to remove and dispose of the same, and Tenant shall pay the reasonable, out-of-pocket costs of such removal to Landlord upon demand. Tenant shall execute an "as is" Bill of Sale conveying Tenant's interest in property that Landlord has elected to assume at the expiration of the Term, and any other reasonable documentation necessary to transfer ownership thereof.

7. **Alterations**. Tenant shall not make or suffer or allow to be made any alterations, additions or improvements in or to the Premises (collectively, "**Alterations**") without first obtaining Landlord's written consent based on plans and specifications (which may be preliminary) submitted by Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, without prior consent from Landlord, Tenant shall be permitted to make interior, non-structural Alterations to the Premises (but not structural or exterior portions of the improvements) that do not adversely affect the roof, or the heating, ventilating, air-conditioning, mechanical, electrical, plumbing or life safety systems of the Premises, provided that the total cost to acquire and install the proposed Alterations is no more than (i) $100,000 in any one instance and (ii) $250,000 in the aggregate during any calendar year.

8. **Signs**.

   a. Tenant shall not affix any signs or other advertising materials to the Premises without the prior written consent of the Landlord, which may be withheld in Landlord's reasonable discretion. Existing signage is hereby approved.

   b. Landlord shall not affix any signs or other advertising materials to the Premises, except that Landlord shall have the right to place a "For Lease" sign on the Premises during the last (six) 6 months of the Term or a "For Sale" sign on the Premises if Landlord desires to sell the Premises.

9. **Utilities, Telephone, and Generator.** Tenant is currently in possession of the Premises and acknowledges that the utilities currently serving the Premises are sufficient for Tenant's use. Tenant shall pay directly to the utility provider when due for the consumption of all utilities used in the Premises during the Term. Tenant shall at all times have the right to access and utilize any generators that service the Premises. In the event any utility shall become unavailable at the Premises, Landlord shall reasonably cooperate with Tenant to get such utility restored as soon as reasonably practicable.

10. **Insurance**. Tenant shall maintain the insurance policies set forth on Exhibit B hereto. Landlord will maintain: (i) commercial general liability insurance with limits of $1,000,000 per occurrence and $2,000,000 in the aggregate, and (ii) causes of loss-special form property insurance on the Premises with customary exclusions in the amount of the full replacement cost thereof, including business interruption insurance or rent loss insurance in amount reasonably determined by Landlord ("**Landlord's Insurance**"). Landlord shall add Tenant as named additional insured on the policies Landlord is required to carry hereunder. All

liability insurance policies must delete the contractual liability exclusion with respect to personal injury or damage to property. All property insurance policies must waive subrogation against the Tenant and Tenant related parties. Any insurance carried by Landlord may be in the form of one or more blanket insurance policy(ies) covering multiple properties. For each month during the Term, Tenant shall make a payment to Landlord (an "**Insurance Payment**") in an amount equal to one-twelfth (1/12) of the Insurance Expenses (as hereinafter defined) for the calendar year in question as reasonably estimated by Landlord. The Insurance Payments are intended to reimburse Landlord for the actual Insurance Expenses accruing during the Term for the Premises. For purposes herein, "**Insurance Expenses**" shall mean the premiums, commercially reasonable deductibles of not more than $50,000 per occurrence, and other expenses incurred by Landlord for Landlord's Insurance, but in no event shall Tenant be required to reimburse Landlord, and Insurance Expenses shall exclude, environmental coverage, mold coverage, terrorism coverage, pollution coverage and all other special coverages and/or endorsements that Landlord, in Landlord's reasonable discretion, may from time to time consider appropriate in connection with Landlord's ownership, management or operation of the Premises. When the actual amount of Insurance Expenses for an applicable calendar year are determined by Landlord, Landlord or Tenant, as applicable, will pay to the other such amounts as may be appropriate to reconcile Tenant's payment of estimated Insurance Expenses based on actual Insurance Expenses, within thirty (30) days after written demand together with commercially reasonable evidence of the final amounts demanded. In the event Landlord shall fail to carry any of the policies required by this Lease, or fails to carry such policies in the form required hereunder, Tenant may purchase such policies on behalf of Landlord and Tenant shall not be responsible for payment of any Insurance Expenses related to such policies for so long as Tenant shall maintain such policies on behalf of Landlord.

Taxes. During the Term, Tenant shall pay prior to delinquency all real property taxes and assessments assessed against the Premises; provided, however, (i) upon prior written notice to Landlord, Tenant shall have the right to contest such taxes and assessments as long as in no event shall Tenant permit the commencement of foreclosure proceedings against the Premises, and (ii) Tenant may pay any assessments over the longest period of time allowed by applicable law prior to delinquency. Landlord shall reasonably cooperate with Tenant in connection with any tax contest. Real property taxes and assessments with respect to the Premises for a billing period during which Tenant's obligations pursuant to this Lease expire or terminate as to the Premises shall be adjusted and prorated on a daily basis between Landlord and Tenant, whether or not such tax or assessment is imposed before or after such expiration or termination of this Lease. Within thirty (30) days after the expiration of the Term, Landlord shall reimburse Tenant for all real property taxes and assessments paid by Tenant for the remainder of that calendar year (it being agreed that Tenant may pay all taxes for such year, subject to the aforesaid reimbursement). This obligation shall survive the expiration of this Lease. Landlord shall have the right, at Landlord's expense (y) to seek a reduction in the valuation of the Premises and/or any portion or part thereof assessed for tax purposes if, within thirty (30) days after delivery of written
11. notice by Landlord to Tenant, Tenant fails to commence a proceeding to secure such reduction; and/or (z) to participate in any such proceeding commenced by Tenant. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND THE LANDLORD PARTIES HARMLESS FROM AND AGAINST ANY COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OR LIABILITIES IN CONNECTION WITH ANY SUCH TAX CONTEST PROCEEDING IF SUCH PROCEEDING HAS BEEN REQUESTED OR INITIATED BY TENANT. The foregoing indemnity by Tenant shall not be applicable if Landlord voluntarily elects to participate in such proceeding. The foregoing indemnity shall expressly survive the expiration or sooner termination of this Lease. Landlord and Tenant shall use commercially reasonable efforts to have the tax assessor send tax bills directly to Tenant and Tenant shall provide a copy thereof within ten (10) days after receipt. In the event the parties are unable to transfer receipt of the tax bill to Tenant, then within ten (10) days after Landlord's receipt thereof, Landlord shall deliver to Tenant copies of any tax or assessment statements that it receives with respect to the Premises, and if Landlord fails to provide any such statement and, as a result of such failure, Tenant does not timely pay taxes, then Landlord shall be responsible for any fees, penalties, or similar charges with respect to the associated taxes or assessments. Otherwise, Tenant shall be responsible for any fees, penalties, or similar charges with respect to the associated taxes or assessments.

WAIVER OF SUBROGATION. RELEASE FROM OWN NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT): ANYTHING TO THE CONTRARY IN THIS LEASE NOTWITHSTANDING, NEITHER PARTY, NOR ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS OR INVITEES (EACH, A "***RELEASED PARTY***") SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY INSURANCE COMPANY (BY
12. WAY OF SUBROGATION OR OTHERWISE) INSURING THE OTHER PARTY FOR ANY LOSS OR DAMAGE TO ANY BUILDING STRUCTURE OR OTHER TANGIBLE PROPERTY (INCLUDING, WITHOUT LIMITATION, EQUIPMENT) ON THE PROPERTY, OR LOSS OF BUSINESS OR RENTAL INCOME IN CONNECTION WITH THE PROPERTY, **EVEN THOUGH SUCH LOSS OR DAMAGE MIGHT HAVE BEEN OCCASIONED BY THE NEGLIGENCE OF ANY**

RELEASED PARTY (THIS CLAUSE SHALL NOT APPLY, HOWEVER, TO ANY DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR THE INTENTIONAL MISCONDUCT OF THE RELEASED PARTY). EACH PARTY REPRESENTS AND COVENANTS THAT IT SHALL OBTAIN APPROPRIATE WAIVERS OF SUBROGATION IN ITS PROPERTY INSURANCE POLICIES THAT IT MAY ELECT TO CARRY. **THIS SECTION RELEASES A PARTY FOR THE CONSEQUENCES OF ITS OWN NEGLIGENCE (EXCLUSIVE OF GROSS NEGLIGENCE).** PARTIES NAMED HEREIN NOT SIGNING THIS LEASE ARE EXPRESS AND INTENDED THIRD PARTY BENEFICIARIES OF THIS WAIVER OF SUBROGATION.

13. **Assignment & Subletting**. Except as provided herein, Tenant shall not assign or in any manner transfer this Lease or any estate or interest hereunder and shall not sublease the Premises or any part thereof without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. As part of Tenant's request for, and as a condition to, Landlord's consent to such assignment or sublease, Tenant shall provide Landlord with financial statements for the proposed transferee and such other information as Landlord may reasonably request. Tenant shall not be entitled to receive monetary damages based upon a claim that Landlord unreasonably withheld its consent to a proposed transfer to a third party and Tenant's sole remedy shall be an action to enforce any such provision through specific performance or declaratory judgment. Tenant shall reimburse Landlord for its actual reasonable costs and expenses incurred in connection with such assignment or sublease request.

Notwithstanding anything in this Lease to the contrary, so long as Tenant is not in default under this Lease beyond applicable notice and cure periods, the consent of the Landlord need not be obtained if the assignment of the Lease is to a: (i) parent, subsidiary or affiliate of Tenant; (ii) company with which Tenant may merge or consolidate; (iii) corporation that acquires all or substantially all of the shares of stock or assets of Tenant; or (iv) to any corporation which is the successor corporation in the event of a corporate reorganization (a "**Related Entity**"); provided, however, that (i) such Related Entity does not use the Premises for any other use than the use permitted by this Lease, and (ii) with respect to an assignment to a Related Entity described in subsections (ii) and (iii), such Related Entity has a tangible net worth equal to or greater than $10,000,000.00. Landlord agrees that Tenant shall have the right, without Landlord's consent, to sublease or license a portion of the Premises to a Related Entity described in subsection (i) above, provided that such Related Entity does not use the Premises for any other use than the use permitted by this Lease. Tenant shall give Landlord written notice at least ten (10) days prior to the effective date of the proposed transfer, along with all applicable documentation and other information necessary for Landlord to determine that the requirements of this Section 13 have been satisfied, including if applicable, the qualification of such proposed transferee as an affiliate of Tenant or a Related Entity.

14. **Events of Default & Remedies.** Each of the following occurrences shall constitute an **"Event of Default"**: (a) Tenant's failure to pay Fixed Rental, or any other sums due from Tenant to Landlord under this Lease (provided, however, no such Event of Default shall occur under this subparagraph (a) unless Tenant fails to pay any such sum within five (5) Business Days after receipt of a written notice of default from Landlord; provided, however, that such notice shall not be required more than two (2) times in a given calendar year); (b) Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease, which failure is not cured within thirty (30) days of written notice from Landlord (provided, however, if Tenant commences such cure within such 30-day period and diligently pursues such cure, Tenant may have such additional time as may be reasonably necessary to effect such cure); (c) Tenant's failure to perform any of the obligations of Tenant in the manner set forth in Section 10, and such failure continues for more than ten (10) days following Tenant's receipt of Landlord's written notice to Tenant of the same; or (d) the admission by Tenant in writing that it cannot meet its obligations as they become due or the making by Tenant of an assignment for the benefit of its creditors. Any Event of Default shall be considered a breach of this Lease by Tenant. In addition to any and all other rights or remedies Landlord may have in connection with this Lease, as provided by law or equity, Landlord shall have the following rights and remedies upon the occurrence of any Event of Default: (a) without terminating this Lease, to change the locks on the doors to the Premises and to exclude Tenant therefrom; (b) terminate this Lease and take possession of the Premises and to re-let the Premises for the Landlord's account (no termination of this Lease shall relieve the Tenant of the obligation to pay any Fixed Rental or any other amounts due under the terms of this Lease prior to termination) and recover the Landlord's Liquidated Damages (as defined below); and (c) Landlord

may terminate Tenant's right to possession of the Premises without terminating this Lease, reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of the Fixed Rental or other amounts due hereunder or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations under this Lease the net rental received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the Premises). The term "**Landlord's Liquidated Damages**" for purposes of this Section means the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid Fixed Rental and other charges and adjustments called for under the Lease which had been earned at the time of termination, (ii) the amount by which the unpaid Fixed Rental and other charges and adjustments called for under the Lease which would have been earned after termination until the time of award exceeds the amount of such Fixed Rental loss for the same period which the Tenant proves could have been reasonably avoided, and (iii) the amount by which the unpaid Fixed Rental and other charges and adjustments called for under this Lease for the balance of the term after the time of such award exceeds the amount of such Fixed Rental loss for the same period that Tenant proves could be reasonably avoided. The worth at the time of award of the sums referred to in subsections (i) and (ii) above, is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). In addition to the foregoing remedies, Tenant shall be required to pay all expenses reasonably incurred by Landlord in enforcing its rights and remedies under this Lease, including attorneys' fees, court costs and interest at the lesser of ten percent (10%) or the maximum rate of interest allowed by applicable law, and shall pay to Landlord the commercially reasonable costs, losses and expenses incurred by Landlord in reletting all or any portion of the Premises, including the cost of removing and storing Tenant's personal property and other property, repairing the Premises, removing and/or replacing Tenant's signage, and making the Premises ready for a new tenant, including the cost of leasehold improvements. Upon any re-letting of the Premises by Landlord, all rent received by Landlord shall be applied (i) first to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant, (ii) second to the payment of any reasonable and related costs and expenses of such re-letting (including brokerage fees and attorney's fees and costs of alterations and repairs), and (iii) third to the payment of all Fixed Rental and other charges due and unpaid under this Lease. In no event shall the Tenant be entitled to receive any surplus of any sums received by Landlord on re-letting the Premises, in excess of the rent and other charges payable under this Lease. In no event shall Tenant be liable for consequential, punitive, exemplary or other damages (other than actual damages only) in connection with this Lease. Landlord shall use commercially reasonable efforts to mitigate damages.

Landlord's Default. If Landlord defaults under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default; provided, however, if Landlord commences such cure within such 30-day period and diligently pursues such cure, Landlord may have such additional time as may be reasonably necessary to effect such cure. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof; provided, however, in the event of a bona fide emergency to person or property, Tenant may cure such default and receive reimbursement for Tenant's reasonable third-party costs in affecting such cure within thirty (30) days after invoice. All obligations of Landlord hereunder will be construed as covenants, not conditions. In no event shall Landlord be liable for consequential, punitive, exemplary or other damages (other than actual damages only) in connection with this Lease. Tenant shall use commercially reasonable efforts to mitigate damages. Landlord's

15. liability for failure to perform any of its obligations hereunder is hereby expressly limited to Landlord's interest in and to the Premises. Should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties, or funds of Landlord, other than against Landlord's interest in and to the Premises. Tenant hereby waives its statutory lien under Section 91.004 of the Texas Property Code. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of Landlord or the individual partners, directors, officers, members or shareholders of Landlord or against Landlord's partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease

Mechanics' Liens. Tenant shall fully and promptly pay all sums necessary for the costs or repairs, alterations, improvements,

16. charges or other work done by Tenant on the Premises. Tenant shall indemnify and hold Landlord harmless from and against any and all such costs and liabilities incurred by Tenant, and against any and all mechanics', materialmen's, or laborers' liens arising

out of or from such work or the cost thereof which may be asserted, claimed or charged against the Premises. This obligation shall survive the termination of this Lease.

17. **Holding Over**. If Tenant fails to vacate the Premises at the Termination Date, then Tenant shall be a tenant at sufferance and Tenant shall pay as a daily Fixed Rental an amount equal to 1.2 times the daily Fixed Rental payable during the last month of the Term. In no event shall Tenant be liable for damages in connection with any holdover unless such holdover continues for a period of more than sixty (60) days. If Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover and Tenant fails to vacate the Premises within sixty (60) days after Landlord notifies Tenant of Landlord's inability to deliver possession, or perform improvements, Tenant shall be liable to Landlord for all reasonable damages that Landlord suffers from the holdover.

18. **Notices**. Any notice or other communication required or permitted to be given hereunder shall be in writing and deemed to be delivered, whether actually received or not, (a) if hand delivered or post marked by the U.S. Postal Service, postage prepaid, registered or certified mail, return receipt requested, upon deposit with the carrier, (b) if sent by courier or express mail where evidence of delivery is retained, upon deposit, or (c) sent via electronic mail as long as such notice is also simultaneously sent by one of the other methods approved hereunder. Any notice executed and delivered by either party's legal counsel (or any other authorized agent of such party) shall be fully effective as if the same had been executed and delivered by such party. Landlord and Tenant may execute this Lease by electronic counterparts or PDF counterparts delivered electronically, each of which shall be deemed an original for all purposes.

19. **Indemnification**.

a. Subject to Section 12 above, Tenant shall indemnify, defend and hold Landlord harmless from any claim for injury to person or damage to property accruing during the Term of this Lease and occurring within, on or about the Premises or arising from the negligence or intentional misconduct of Tenant, its agents, officers, employees, or contractors. For the avoidance of doubt, this Section 19(a) does not cover an environmental claim.

b. Tenant agrees that Tenant shall not knowingly receive, accept, store, dispose or release any hazardous or toxic substances on or in the Premises in violation of environmental laws, or transport any hazardous or toxic substances to or from the Premises in violation of environmental laws, except materials used in Tenant's ordinary course of business, and any such materials will be stored, used, and disposed of in compliance with all environmental laws. Tenant shall indemnify, defend and hold Landlord harmless from any claim relating to the environmental condition of the Premises accruing during the Term of this Lease and caused by Tenant or its agents, employees, contractors, or invitees (each, a "**Tenant Party**"). For the avoidance of doubt, Tenant shall have no liability to Landlord for any environmental condition of the Premises (or a related claim) that (a) was not caused by a Tenant Party, or (b) existed or accrued prior to the Commencement Date, even if caused by a Tenant Party, except to the extent a Tenant Party exacerbates such pre-existing condition.

These indemnity obligations shall survive the termination of this Lease as to claims that accrued during the Term of this Lease. For Landlord's indemnification rights to remain effective, Landlord must notify Tenant in writing within sixty (60) days of receiving notice of the claim.

20. **Casualty and Condemnation**. If (a) (i) more than fifty percent (50%) of the square footage of the Premises cannot be used for the purposes contemplated by this Lease because of casualty, or (ii) more than fifty percent (50%) of the square footage of the building located on the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, and (b) Landlord reasonably estimates ("**Landlord's Rebuild Estimate**") that such damage cannot be restored within two hundred seventy (270) days from the occurrence of such event, then Landlord or Tenant may elect to terminate this Lease by providing written notification to the other on or before sixty (60) days after delivery of Landlord's

Rebuild Estimate. Landlord shall deliver Landlord's Rebuild Estimate no later than thirty (30) days following the date of such casualty. Notwithstanding the foregoing, either party may terminate this Lease (effective as of the date of the applicable event) if the Premises are damaged by casualty during the last twelve (12) months of the Term and Landlord's Rebuild Estimate indicates that it will require more than one hundred fifty (150) days from the occurrence of such event to restore the Premises. If neither party elects to terminate this Lease as provided above or if neither party has the right to terminate this Lease as provided above, then Landlord shall promptly commence to restore the Premises to substantially the same condition that existed prior to the fire or other casualty ("**Landlord's Repair Obligation**"), exclusive of any Alterations, additions, improvements, fixtures and equipment installed by or on behalf of Tenant (whether before or after the Commencement Date). Notwithstanding the foregoing, Landlord shall not be required to fulfill its Landlord's Repair Obligations to the extent that any lender requires that Landlord's insurance proceeds be applied to the payment of the mortgage debt or if the casualty is not a claim covered by insurance. Notwithstanding anything to the contrary contained herein, if Landlord's Repair Obligation has not been substantially completed within forty-five (45) days after the estimated restoration date set forth in Landlord's Rebuild Estimate (the last day of such 45-day period being the "**Casualty Termination Date**"), Tenant shall have the right to terminate this Lease effective upon thirty (30) days' prior written notice to Landlord delivered within sixty (60) days after the Casualty Termination Date; provided, however, that such termination shall be null and void if Landlord completes the Landlord's Repair Obligations prior to the expiration of such sixty (60) day period. If a casualty renders all or part of the Premises untenantable, Rent shall proportionately abate commencing on the date of the casualty and ending when the Premises are delivered to Tenant with Landlord's Repair Obligation substantially complete. The extent of the abatement shall be based upon the portion of the Premises rendered untenantable, inaccessible or unfit for use in a reasonable business manner for the purposes stated in this Lease. Tenant shall not be entitled to such abatement if the fire or other casualty was caused by the intentional wrongful action of Tenant, its employees, agents, or contractors. In the event that this Lease is terminated as set forth herein, the Fixed Rental shall be apportioned as of the date of the damage and, provided Tenant is not in default, Tenant shall be entitled to a refund from Landlord of amounts for the Fixed Rental or other charges prepaid by Tenant to Landlord for the period arising after the date of the casualty. Tenant will have no claim to insurance proceeds with respect to insurance policies maintained by Landlord, condemnation award or proceeds in lieu of condemnation; provided that in the event of a casualty, Tenant shall be permitted to retain any insurance proceeds payable under any policy carried by Tenant. Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award or prohibit Landlord from claiming any award otherwise available to Landlord, including loss of lease value) against the condemnor for the value of Tenant's personal property taken, loss of leasehold interest, moving costs and loss of business.

21. **Miscellaneous**.

a. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between Landlord and Tenant, it being understood and agreed that neither the method of computation of Fixed Rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

b. Within thirty (30) days after the request of the other, at any time and from time to time, both Landlord and Tenant agree to execute, acknowledge and deliver an estoppel certificate certifying that (i) this Lease is in full force and effect, (ii) the date through which Fixed Rental and other charges due hereunder have been paid and (iii) to such party's knowledge, that no default by Landlord or Tenant, as appropriate, has occurred hereunder or specifying the nature of any such default.

c. Each of the parties represents and warrants that there are no unpaid claims for brokerage commission or finder's fees in connection with the execution of this Lease, and each agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim (including without limitation, the cost of legal fees in connection therewith). This obligation shall survive the termination of this Lease.

d. The laws of the state in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this Lease (without reference to choice of law principles).

e. Each provision of this Lease shall be construed in such manner as to give such provision the fullest legal force and effect possible. To the extent any provision herein (or part of such provision) is held to be unenforceable or invalid

when applied to a particular set of facts, or otherwise, the unenforceability or invalidity of such provision (or part thereof) shall not affect the enforceability or validity of the remaining provisions hereof (or of the remaining parts of such provision), which shall remain in full force and effect, nor shall such unenforceability or invalidity render such provision (or part thereof) would be held legally enforceable and/or valid.

f. Notwithstanding anything to the contrary, in no event shall Landlord or Tenant be liable for consequential, punitive, exemplary or other damages (above and beyond actual damages only) in connection with this Lease.

g. In the event of litigation hereunder, the prevailing party shall be entitled to an award of its reasonable attorney's fees. Landlord and Tenant agree that should any suit, action or proceeding arising out of this Lease be instituted by any party hereto, such suit, action or proceeding shall be instituted only in a state or federal court in the county in which the Premises are located or, if no such court is located in that county, then in the state or federal court that is closest to the Premises (the "**Approved Jurisdiction**"). Landlord and Tenant each consent to the *in personam* jurisdiction of any state or federal court in the Approved Jurisdiction, and waive any objection to the venue of any such suit, action or proceeding. This Section 22(h) shall survive the expiration or termination of this Lease.

22. **Delivery of the Premises**. Tenant acknowledges and agrees the Premises are delivered by Landlord and accepted by Tenant in its present **"AS IS, WHERE IS, WITH ALL FAULTS"** condition as of the Commencement Date. **Tenant acknowledges that it has been provided access and ample opportunity to inspect the Premises and its existing condition, improvements and systems and, except as expressly provided otherwise in this Lease, is not relying upon any warranty or representation of Landlord or its agents regarding the condition, adequacy or suitability of the same for Tenant's intended purpose, LANDLORD HEREBY EXPRESSLY DISCLAIMING ANY SUCH WARRANTY. Landlord shall have no liability or obligation to any Tenant Party for any pre-existing environmental condition existing as of the Effective Date, except to the extent Landlord, its affiliates, agents or contractors exacerbate such condition.**

23. **No Contractual or Statutory Lien**. Landlord hereby waives any contractual or statutory lien on the goods, wares, or equipment of Tenant located at the Premises.

24. **Attornment**. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgagee made by Landlord covering any part of the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

25. **Priority of Lease**. Upon written request of Landlord or the holder or of a proposed holder of any mortgage now or hereafter covering or to cover any part of the Premises, Tenant will subordinate its rights under this Lease to the lien of such mortgage and to all advances made or to be made upon the security thereof, and Tenant shall, within ten (10) business days after written demand therefor, execute, acknowledge, and deliver an instrument, in the form customarily used by such encumbrance holder, and reasonably satisfactory to Tenant, effecting such subordination; provided, however, as a condition to such subordination, Landlord shall cause such lienholder to sign a commercially reasonable subordination and non-disturbance agreement.

26. **OFAC.** Landlord hereby represents and warrants to Tenant that Landlord is not acting, directly or indirectly for, or on behalf of, any person, group, entity or nation named by any Executive Order of the President of the United States of America (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department, as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, or nation pursuant to any law that is enforced or administered by the United States Office of Foreign Assets Control, and is not engaging in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

[Remainder of Page Intentionally Blank]

EXECUTED on the dates set forth below to be effective as of the date first above written.

TENANT:

TUESDAY MORNING, INC., a Texas corporation

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

Address:

6250 LBJ Freeway
Dallas, Texas 75240
Attention: Jim Spisak
E-Mail: jspisak@tuesdaymorning.com &
legal@tuesdaymorning.com

With a copy to:

Haynes and Boone LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attention: Brack Bryant
E-mail: brack.bryant@haynesboone.com

Signature Page to Lease

LANDLORD:

6250 LBJ Freeway, LP, a Texas limited partnership

By: 6250 LBJ Freeway GP, LLC
a Texas limited liability company,
its General Partner

By: /s/ Michael C. O'Malley
Name: Michael C. O'Malley
Title: Manager

Address:

6250 LBJ Freeway, LP
3800 N. Lamar Blvd, Suite 350
Austin, Texas 78756
Attention: Brett Zimmerman
Email: bzimmerman@pennybackercap.com

With a copy to:

Jackson Walker L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
Attention: Kati Orso
E-mail: korso@jw.com

Signature Page to Lease

EXHIBIT A

LEGAL DESCRIPTION

BEING 4.883 ACRE (212,701 SQUARE FOOT) TRACT OF LAND SITUATED IN THE THOMAS DYKES SURVEY, ABSTRACT NO. 405 AND THE MCKINNEY & WILLIAMS SURVEY, ABSTRACT NO. 1032, DALLAS COUNTY, TEXAS, SAME BEING LOCATED IN BLOCK 7443, CITY OF DALLAS, DALLAS COUNTY, TEXAS AND BEING A PORTION OF THE LAND CONVEYED TO TUESDAY MORNING, INC. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 2002205, PAGE 1663, DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BEASLEY RPLS 4050" FOUND FOR CORNER IN THE SOUTH LINE OF LYNDON B. JOHNSON FREEWAY/INTERSTATE HIGHWAY 635 (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY), SAID ROAD BEING THE NORTHERNMOST NORTHWEST CORNER OF SAID TUESDAY MORNING, INC. TRACT AND THE NORTHEAST CORNER OF LOT 1, BLOCK A OF 6200 L.B.J. OFFICE PARK, AN ADDITION TO THE CITY OF DALLAS ACCORDING TO THE PLAT RECORDED IN VOLUME 84234, PAGE 1926 D.R.D.C.T.;

THENCE NORTH 88°06'13" EAST, ALONG SAID SOUTH LINE OF LYNDON B. JOHNSON FREEWAY/INTERSTATE HIGHWAY 635 FOR A DISTANCE OF 23.21 FEET TO A 1/2 INCH IRON WITH ORANGE PLASTIC CAP STAMPED "P&C 100871" SET FOR CORNER;

THENCE NORTH 85°05'23" EAST, CONTINUING ALONG SAID SOUTH LINE OF LYNDON B. JOHNSON FREEWAY/ INTERSTATE HIGHWAY 635 FOR A DISTANCE OF 267.87 FEET TO A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "P&C 100871" SET FOR CORNER;

THENCE NORTH 89°18'53" EAST, CONTINUING ALONG SAID SOUTH LINE OF LYNDON B. JOHNSON FREEWAY/ INTERSTATE HIGHWAY 635 FOR A DISTANCE OF 116.99 FEET TO A CORNER ON AN ELECTRIC VAULT, SAID CORNER BEING AT THE INTERSECTION OF SAID SOUTH LINE OF LYNDON B. JOHNSON FREEWAY/INTERSTATE HIGHWAY 635 AND THE WEST LINE OF HUGHES LANE (A 60-FOOT-WIDE PUBLIC RIGHT-OF-WAY);

THENCE SOUTH, ALONG SAID WEST LINE OF HUGHES LANE FOR A DISTANCE OF 300.11 FEET TO AN "X" CUT IN CONCRETE FOUND FOR CORNER;

THENCE SOUTH 00°23'32" WEST, CONTINUING ALONG SAID WEST LINE OF HUGHES LANE FOR A DISTANCE OF 174.17 FEET TO A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "P&C 100871" SET FOR CORNER IN THE NORTH LINE OF A 15 FOOT WIDE ALLEY;

THENCE SOUTH 89°46'20" WEST, DEPARTING SAID WEST LINE OF HUGHES LANE AND ALONG SAID 15 WIDE ALLEY FOR A DISTANCE OF 578.75 FEET TO A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "P&C 100871" SET FOR CORNER IN THE EAST LINE OF AFOREMENTIONED LOT 1;

THENCE NORTH 00°19'49" EAST, ALONG SAID EAST LINE OF LOT 1 FOR A DISTANCE OF 136.96 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE SOUTH 89°53’46” EAST, CONTINUING ALONG SAID EAST LINE OF LOT 1 FOR A DISTANCE OF 172.29 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 00°02’11” WEST, CONTINUING ALONG SAID EAST LINE OF LOT 1 FOR A DISTANCE OF 314.84 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.883 ACRES, OR 212,701 SQUARE FEET OF LAND, MORE OR LESS.

EXHIBIT B

TENANT INSURANCE REQUIREMENTS

Tenant, at its sole cost and expense, shall procure and maintain throughout the Term of the Lease the following policies of insurance (which may be part of umbrella policies):

(a) property insurance causing Tenant's leasehold improvements and business personal property (sometimes also referred to as "fixtures and contents") at the Premises to be insured under the broadest available special form of property coverage, sometimes referred to as "all-risk" coverage (such as the form identified as CP 10 30, and any successor form, published by Insurance Services Office, Inc.), such insurance coverage **(i)** to be in the full amount of the replacement cost of all insured property, **(ii)** to include coverage for the loss of business income, in an amount deemed reasonable by Tenant, **(iii)** to contain no deductible or self-insured retention in excess of $100,000.00 **(iv)** to contain no coinsurance penalty clause, and (v) to include a waiver or subrogation in favor of Landlord; and

(b) combination of commercial general liability and umbrella insurance insuring both Landlord and Tenant against all claims, demands or actions for bodily injury, property damage, personal and advertising injury arising out of or in connection with Tenant's use or occupancy of the Premises, or by the condition of the Premises, with a limit of not less than $10,000,000 per occurrence and aggregate (and no offset for occurrences on property other than the Premises), and with coverage for contractual liability naming Landlord as Additional Insured and to include a waiver of subrogation in favor of the Landlord; and

(c) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state where the Premises is located, together with employer's liability insurance in an amount not less than $1,000,000.00 each accident, $1,000,000.00 disease policy limit, and $1,000,000.00 disease each employee; the full limits of insurance are to apply per location, and include a waiver of subrogation in favor of Landlord; and

(d) automobile liability insurance covering all owned, non-owned, and hired vehicles with a $1,000,000 per accident limit for bodily injury and property damage;

(e) during any period when construction work is being done in or on the Premises, such additional insurance as Landlord may reasonably require; and

(f) business interruption insurance in the unallocated amount of at least $10,000,000; and

(g) All policies must be written by insurance companies whose rating in the most recent Best’s Rating Guide is not less than A(-): VII; and

(h) Certificates of Insurance evidencing the required coverages must be delivered to Landlord prior to the commencement of the Lease.

Exhibit 10.4

LEASE AGREEMENT

This **SHORT TERM LEASE** (this **"Lease"**) is entered into as of the 31st day of December, 2020, by and between 14303 INWOOD ROAD, LP, a Texas limited partnership (**"Landlord"**) and TUESDAY MORNING PARTNERS, LTD., a Texas limited partnership (**"Tenant"**).

1. **Lease Grant and Term**. Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the real property as described in the legal description attached hereto as Exhibit A (together with any improvements thereon) located at (i) 4400-4404 South Beltwood Parkway, Farmers Branch, Texas; (ii) 14303 Inwood Road, Farmers Branch, Texas; (iii) 14621 Inwood Road, Addison, Texas; (iv) 14639-14645 Inwood Road, Addison, Texas; and (v) 14601-14603 Inwood Road, Addison, Texas (each of the foregoing, individually, a "**Property**" and, collectively, the "**Premises**"). The term of this Lease (the **"Term"**) shall commence on the date first set forth above (the **"Commencement Date"**) and shall continue until 5:00 p.m. (Central Standard Time) on the date that is thirty (30) months following the Commencement Date (**"Termination Date"**).

Tenant may also extend the Term on one (1) occasion for a period of twelve (12) months by delivering in writing an extension notice to Landlord not later than six (6) months prior to the then scheduled expiration date of the Term, in which event this Lease shall be so extended as shall the Termination Date.

2. **Permitted Use; Operation**. Tenant shall use the Premises as a warehouse and distribution center, together with any incidental purposes thereto, and for no other purpose. Tenant will ensure that Tenant's use of the Premises complies with all laws, ordinances, rules and regulations of governmental authorities, and all matters of record affecting the Premises, now or hereafter in effect.

3. **Rent Payments**. During the Term, Tenant agrees to pay to Landlord a monthly sum equal to $351,207.79 (the **"Fixed Rental"**). All Fixed Rental payments shall be due and payable, in advance, on or before the first day of each succeeding calendar month during the Term. Fixed Rental for any fractional month during the Term shall be prorated based on the current Fixed Rental for each day of the partial month this Lease is in effect. For the avoidance of doubt, Tenant has no monetary obligations to Landlord under this Lease unless expressly provided otherwise in this Lease. Tenant may (i) send Fixed Rental Payments to the following address P.O. Box 471369, Fort Worth, Texas 76147, or (ii) elect to wire Fixed Rental Payments (or pay via Automated Clearing House), in which case Landlord shall provide wiring instructions to Tenant. Commencing on the first (1^{st}) anniversary of the Commencement Date and continuing each anniversary date thereafter during the Term (including any extension thereof), the Fixed Rental amount shall be increased by three percent (3.0%) over the prior year's Fixed Rental amount. Notwithstanding anything contained in this Lease to the contrary, this Lease is an absolute net lease. It is the intention of Landlord and Tenant that the Fixed Rental and other sums and charges provided herein shall be absolutely net to Landlord and that such amounts shall be paid without setoff, abatement, deduction, reduction, except as otherwise expressly permitted by this Lease.

4. **Late Fees; Interest**. In the event that a Fixed Rental payment is not received by Landlord within five (5) days of the date it is due, Tenant may be assessed a late fee by Landlord of 2.5% of the amount due; provided, however, no such late fee shall be owed unless such late payment continues for a period of five (5) days after written notice to Tenant (but Tenant shall only be entitled to one such notice in any calendar year, and thereafter during such calendar year any such payment not paid within five (5) days of its due date shall trigger such late payment without the requirement of additional notice).

5. **Security Deposit**. None.

6. **Maintenance, Repair, and Replacement**. Excluding damage by casualty or condemnation, which are governed elsewhere in this Lease, Tenant, at its sole cost and expense, shall maintain and repair in their current condition, reasonable wear and tear excepted, the Premises (including the roof, foundation, exterior walls and other structural elements) and equipment and systems within the Premises (including generators, lighting, electrical, plumbing, hydraulics, mechanical, heating, ventilating and air conditioning), all driveways, parking areas, landscaping, and other improvements located on the Premises, which maintenance and repair shall be in Tenant's reasonable discretion, and may include replacement of such equipment, systems, or

structural elements of the Property if replacement is required in Tenant's reasonable discretion. During the Term of this Lease, Landlord shall have no obligations with respect to the maintenance or repair (including replacement) of the Premises, all of such obligations being assumed by Tenant, except as otherwise expressly provided herein. Landlord may make any repairs to the Premises upon thirty (30) days advance written notice to Tenant (or such shorter period of time if Landlord reasonably determines the failure to immediately repair will result in material long-term damage to the Premises (or any part thereof), or would cause injury or harm to human health, in Landlord's reasonable judgment), so long as Landlord uses commercially reasonable efforts to minimize interference with Tenant's business operations in exercising its rights hereunder. In the event that Landlord is required to make any repairs to the Premises to correct a condition or state of facts which if not corrected would result in long-term material damage to the Premises (or any material part thereof), or would cause injury or harm to human health, in Landlord's reasonable judgment and Tenant fails to commence and diligently pursue such repair within ten (10) days of receipt of notice thereof (or with respect to an emergency condition, within five (5) days of receipt of notice thereof), Tenant shall reimburse Landlord for all of Landlord's out-of-pocket costs in making such repair within ten (10) days following Landlord's invoice therefor. Landlord shall indemnify and hold harmless Tenant for any actual, out-of-pocket costs, expenses or losses which Tenant incurs due to Landlord's, its agents or contractors' negligence or willful misconduct in connection with any repairs done by Landlord or on behalf of Landlord at the Premises. Notwithstanding anything to the contrary, at the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in the then-existing condition of the Premises. Tenant and Landlord shall schedule a walk-through inspection of the Premises at least thirty (30) days in advance of the expiration date of the Premises. Landlord shall have the right to identify which furniture and any other tangible personal property on the Premises that Landlord requires Tenant to remove at the time Tenant vacates the Premises (provided, that, Landlord agrees that Tenant shall in no event be obligated to remove, nor incur any costs or expenses related to removal or disposal of, any shelving, sorting and/or conveyer system(s) located at or in any of the Properties, either prior to or after expiration of the Term, and Landlord shall be entitled to any salvage value attributable to such shelving, sorting and/or conveyer system(s)). In the event that Tenant fails to remove such identified property by the expiration or termination of this Lease, then such property shall be considered abandoned and, at Landlord's election, be deemed the property of Landlord (except for any tangible personal property utilized by Tenant pursuant to easements, leases, or licenses, provided that if such property is not removed by the expiration of the Lease Term, Landlord shall have the right to remove the same at Tenant's reasonable expense), and Landlord shall have the option to remove and dispose of the same, and Tenant shall pay the reasonable, out-of-pocket costs of such removal to Landlord upon demand. Tenant shall execute an "as is" Bill of Sale conveying Tenant's interest in property that Landlord has elected to assume at the expiration of the Term, and any other reasonable documentation necessary to transfer ownership thereof.

7. **Alterations**. Tenant shall not make or suffer or allow to be made any alterations, additions or improvements in or to the Premises (collectively, "**Alterations**") without first obtaining Landlord's written consent based on plans and specifications (which may be preliminary) submitted by Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, without prior consent from Landlord, Tenant shall be permitted to make interior, non-structural Alterations to a Property (but not structural or exterior portions of the improvements) that do not adversely affect the roof, or the heating, ventilating, air-conditioning, mechanical, electrical, plumbing or life safety systems of such Property, provided that the total cost to acquire and install the proposed Alterations at any individual Property is no more than (i) $250,000 in any one instance and (ii) $500,000 in the aggregate with respect to such Property during any calendar year.

8. **Signs**.

   a. Tenant shall not affix any signs or other advertising materials to the Premises without the prior written consent of the Landlord, which may be withheld in Landlord's reasonable discretion. Existing signage is hereby approved.

   b. Landlord shall not affix any signs or other advertising materials to the Premises, except that Landlord shall have the right to place a "For Lease" sign on the Premises during the last (six) 6 months of the Term or a "For Sale" sign on the Premises if Landlord desires to sell the Premises.

9. **Utilities, Telephone, and Generator.** Tenant is currently in possession of the Premises and acknowledges that the utilities currently serving the Premises are sufficient for Tenant's use. Tenant shall pay directly to the utility provider when due for the consumption of all utilities used in the Premises during the Term. Tenant shall at all times have the right to access and utilize any generators that service the Premises. In the event any utility shall become unavailable at the Premises, Landlord shall reasonably cooperate with Tenant to get such utility restored as soon as reasonably practicable.

Insurance. Tenant shall maintain the insurance policies set forth on Exhibit B hereto. Landlord will maintain: (i) commercial general liability insurance with limits of $1,000,000 per occurrence and $2,000,000 in the aggregate, and (ii) causes of loss-special form property insurance on the Premises with customary exclusions in the amount of the full replacement cost thereof, including business interruption insurance or rent loss insurance in amount reasonably determined by Landlord ("**Landlord's Insurance**"). Landlord shall add Tenant as named additional insured on the policies Landlord is required to carry hereunder. All liability insurance policies must delete the contractual liability exclusion with respect to personal injury or damage to property. All property insurance policies must waive subrogation against the Tenant and Tenant related parties. Any insurance carried by Landlord may be in the form of one or more blanket insurance policy(ies) covering multiple properties. For each month during the Term, Tenant shall make a payment to Landlord (an "**Insurance Payment**") in an amount equal to one-twelfth (1/12) of the Insurance Expenses (as hereinafter defined) for the calendar year in question as reasonably estimated by Landlord. The Insurance Payments are intended to reimburse Landlord for the actual Insurance Expenses accruing during the Term for the Premises.

10. For purposes herein, "**Insurance Expenses**" shall mean the premiums, commercially reasonable deductibles of not more than $50,000 per occurrence, and other expenses incurred by Landlord for Landlord's Insurance, but in no event shall Tenant be required to reimburse Landlord, and Insurance Expenses shall exclude, environmental coverage, mold coverage, terrorism coverage, pollution coverage and all other special coverages and/or endorsements that Landlord, in Landlord's reasonable discretion, may from time to time consider appropriate in connection with Landlord's ownership, management or operation of the Premises. When the actual amount of Insurance Expenses for an applicable calendar year are determined by Landlord, Landlord or Tenant, as applicable, will pay to the other such amounts as may be appropriate to reconcile Tenant's payment of estimated Insurance Expenses based on actual Insurance Expenses, within thirty (30) days after written demand together with commercially reasonable evidence of the final amounts demanded. In the event Landlord shall fail to carry any of the policies required by this Lease, or fails to carry such policies in the form required hereunder, Tenant may purchase such policies on behalf of Landlord and Tenant shall not be responsible for payment of any Insurance Expenses related to such policies for so long as Tenant shall maintain such policies on behalf of Landlord.

Taxes. During the Term, Tenant shall pay prior to delinquency all real property taxes and assessments assessed against the Premises; provided, however, (i) upon prior written notice to Landlord, Tenant shall have the right to contest such taxes and assessments as long as in no event shall Tenant permit the commencement of foreclosure proceedings against the Premises, and (ii) Tenant may pay any assessments over the longest period of time allowed by applicable law prior to delinquency. Landlord shall reasonably cooperate with Tenant in connection with any tax contest. Real property taxes and assessments with respect to the Premises for a billing period during which Tenant's obligations pursuant to this Lease expire or terminate as to the Premises shall be adjusted and prorated on a daily basis between Landlord and Tenant, whether or not such tax or assessment is imposed before or after such expiration or termination of this Lease. Within thirty (30) days after the expiration of the Term, Landlord shall reimburse Tenant for all real property taxes and assessments paid by Tenant for the remainder of that calendar year (it being agreed that Tenant may pay all taxes for such year, subject to the aforesaid reimbursement). This obligation shall survive the expiration of this Lease. Landlord shall have the right, at Landlord's expense (y) to seek a reduction in the valuation of

11. the Premises and/or any portion or part thereof assessed for tax purposes if, within thirty (30) days after delivery of written notice by Landlord to Tenant, Tenant fails to commence a proceeding to secure such reduction; and/or (z) to participate in any such proceeding commenced by Tenant. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND THE LANDLORD PARTIES HARMLESS FROM AND AGAINST ANY COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OR LIABILITIES IN CONNECTION WITH ANY SUCH TAX CONTEST PROCEEDING IF SUCH PROCEEDING HAS BEEN REQUESTED OR INITIATED BY TENANT. The foregoing indemnity by Tenant shall not be applicable if Landlord voluntarily elects to participate in such proceeding. The foregoing indemnity shall expressly survive the expiration or sooner termination of this Lease. Landlord and Tenant shall use commercially reasonable efforts to have the tax assessor send tax bills directly to Tenant and Tenant shall provide a copy thereof within ten (10) days after receipt. In the event the parties are unable to transfer receipt of the tax bill to Tenant, then within ten (10) days after Landlord's receipt thereof, Landlord shall deliver to Tenant copies of any tax or assessment statements that it receives with respect to the Premises, and if Landlord fails to provide any such statement and, as a result of such failure, Tenant does not timely pay taxes, then Landlord shall be

responsible for any fees, penalties, or similar charges with respect to the associated taxes or assessments. Otherwise, Tenant shall be responsible for any fees, penalties, or similar charges with respect to the associated taxes or assessments.

12. **WAIVER OF SUBROGATION. RELEASE FROM OWN NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT)**: ANYTHING TO THE CONTRARY IN THIS LEASE NOTWITHSTANDING, NEITHER PARTY, NOR ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS OR INVITEES (EACH, A "***RELEASED PARTY***") SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY INSURANCE COMPANY (BY WAY OF SUBROGATION OR OTHERWISE) INSURING THE OTHER PARTY FOR ANY LOSS OR DAMAGE TO ANY BUILDING STRUCTURE OR OTHER TANGIBLE PROPERTY (INCLUDING, WITHOUT LIMITATION, EQUIPMENT) ON THE PROPERTY, OR LOSS OF BUSINESS OR RENTAL INCOME IN CONNECTION WITH THE PROPERTY, **EVEN THOUGH SUCH LOSS OR DAMAGE MIGHT HAVE BEEN OCCASIONED BY THE NEGLIGENCE OF ANY RELEASED PARTY** (THIS CLAUSE SHALL NOT APPLY, HOWEVER, TO ANY DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE RELEASED PARTY). EACH PARTY REPRESENTS AND COVENANTS THAT IT SHALL OBTAIN APPROPRIATE WAIVERS OF SUBROGATION IN ITS PROPERTY INSURANCE POLICIES THAT IT MAY ELECT TO CARRY. **THIS SECTION RELEASES A PARTY FOR THE CONSEQUENCES OF ITS OWN NEGLIGENCE (EXCLUSIVE OF GROSS NEGLIGENCE).** PARTIES NAMED HEREIN NOT SIGNING THIS LEASE ARE EXPRESS AND INTENDED THIRD PARTY BENEFICIARIES OF THIS WAIVER OF SUBROGATION.

13. **Assignment & Subletting**. Except as provided herein, Tenant shall not assign or in any manner transfer this Lease or any estate or interest hereunder and shall not sublease the Premises or any part thereof without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. As part of Tenant's request for, and as a condition to, Landlord's consent to such assignment or sublease, Tenant shall provide Landlord with financial statements for the proposed transferee and such other information as Landlord may reasonably request. Tenant shall not be entitled to receive monetary damages based upon a claim that Landlord unreasonably withheld its consent to a proposed transfer to a third party and Tenant's sole remedy shall be an action to enforce any such provision through specific performance or declaratory judgment. Tenant shall reimburse Landlord for its actual reasonable costs and expenses incurred in connection with such assignment or sublease request.

Notwithstanding anything in this Lease to the contrary, so long as Tenant is not in default under this Lease beyond applicable notice and cure periods, the consent of the Landlord need not be obtained if the assignment of the Lease is to a: (i) parent, subsidiary or affiliate of Tenant; (ii) company with which Tenant may merge or consolidate; (iii) corporation that acquires all or substantially all of the shares of stock or assets of Tenant; or (iv) to any corporation which is the successor corporation in the event of a corporate reorganization (a "**Related Entity**"); provided, however, that (i) such Related Entity does not use the Premises for any other use than the use permitted by this Lease, and (ii) with respect to an assignment to a Related Entity described in subsections (ii) and (iii), such Related Entity has a tangible net worth equal to or greater than $10,000,000.00. Landlord agrees that Tenant shall have the right, without Landlord's consent, to sublease or license a portion of the Premises to a Related Entity described in subsection (i) above, provided that such Related Entity does not use the Premises for any other use than the use permitted by this Lease. Tenant shall give Landlord written notice at least ten (10) days prior to the effective date of the proposed transfer, along with all applicable documentation and other information necessary for Landlord to determine that the requirements of this Section 13 have been satisfied, including if applicable, the qualification of such proposed transferee as an affiliate of Tenant or a Related Entity.

14. **Events of Default & Remedies.** Each of the following occurrences shall constitute an **"Event of Default"**: (a) Tenant's failure to pay Fixed Rental, or any other sums due from Tenant to Landlord under this Lease (provided, however, no such Event of Default shall occur under this subparagraph (a) unless Tenant fails to pay any such sum within five (5) Business Days after receipt of a written notice of default from Landlord; provided, however, that such notice shall not be required more than two (2) times in a given calendar year); (b) Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease, which failure is not cured within thirty (30) days of written notice from Landlord (provided, however,

if Tenant commences such cure within such 30-day period and diligently pursues such cure, Tenant may have such additional time as may be reasonably necessary to effect such cure); (c) Tenant's failure to perform any of the obligations of Tenant in the manner set forth in Section 10, and such failure continues for more than ten (10) days following Tenant's receipt of Landlord's written notice to Tenant of the same; or (d) the admission by Tenant in writing that it cannot meet its obligations as they become due or the making by Tenant of an assignment for the benefit of its creditors. Any Event of Default shall be considered a breach of this Lease by Tenant. In addition to any and all other rights or remedies Landlord may have in connection with this Lease, as provided by law or equity, Landlord shall have the following rights and remedies upon the occurrence of any Event of Default: (a) without terminating this Lease, to change the locks on the doors to the Premises and to exclude Tenant therefrom; (b) terminate this Lease and take possession of the Premises and to re-let the Premises for the Landlord's account (no termination of this Lease shall relieve the Tenant of the obligation to pay any Fixed Rental or any other amounts due under the terms of this Lease prior to termination) and recover the Landlord's Liquidated Damages (as defined below); and (c) Landlord may terminate Tenant's right to possession of the Premises without terminating this Lease, reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of the Fixed Rental or other amounts due hereunder or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations under this Lease the net rental received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the Premises). The term "**Landlord's Liquidated Damages**" for purposes of this Section means the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid Fixed Rental and other charges and adjustments called for under the Lease which had been earned at the time of termination, (ii) the amount by which the unpaid Fixed Rental and other charges and adjustments called for under the Lease which would have been earned after termination until the time of award exceeds the amount of such Fixed Rental loss for the same period which the Tenant proves could have been reasonably avoided, and (iii) the amount by which the unpaid Fixed Rental and other charges and adjustments called for under this Lease for the balance of the term after the time of such award exceeds the amount of such Fixed Rental loss for the same period that Tenant proves could be reasonably avoided. The worth at the time of award of the sums referred to in subsections (i) and (ii) above, is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). In addition to the foregoing remedies, Tenant shall be required to pay all expenses reasonably incurred by Landlord in enforcing its rights and remedies under this Lease, including attorneys' fees, court costs and interest at the lesser of ten percent (10%) or the maximum rate of interest allowed by applicable law, and shall pay to Landlord the commercially reasonable costs, losses and expenses incurred by Landlord in reletting all or any portion of the Premises, including the cost of removing and storing Tenant's personal property and other property, repairing the Premises, removing and/or replacing Tenant's signage, and making the Premises ready for a new tenant, including the cost of leasehold improvements. Upon any re-letting of the Premises by Landlord, all rent received by Landlord shall be applied (i) first to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant, (ii) second to the payment of any reasonable and related costs and expenses of such re-letting (including brokerage fees and attorney's fees and costs of alterations and repairs), and (iii) third to the payment of all Fixed Rental and other charges due and unpaid under this Lease. In no event shall the Tenant be entitled to receive any surplus of any sums received by Landlord on re-letting the Premises, in excess of the rent and other charges payable under this Lease. In no event shall Tenant be liable for consequential, punitive, exemplary or other damages (other than actual damages only) in connection with this Lease. Landlord shall use commercially reasonable efforts to mitigate damages.

Landlord's Default. If Landlord defaults under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default; provided, however, if Landlord commences such cure within such 30-day period and diligently pursues such cure, Landlord may have such additional time as may be reasonably necessary to effect such cure. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof; provided, however, in the event of a bona fide emergency to person or property, Tenant may cure such default and receive reimbursement for Tenant's reasonable third-party costs in

15. affecting such cure within thirty (30) days after invoice. All obligations of Landlord hereunder will be construed as covenants, not conditions. In no event shall Landlord be liable for consequential, punitive, exemplary or other damages (other than actual damages only) in connection with this Lease. Tenant shall use commercially reasonable efforts to mitigate damages. Landlord's liability for failure to perform any of its obligations hereunder is hereby expressly limited to Landlord's interest in and to the Premises. Should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Premises, and no attachment, execution, or other writ or process

shall be sought, issued, or levied upon any assets, properties, or funds of Landlord, other than against Landlord's interest in and to the Premises. Tenant hereby waives its statutory lien under Section 91.004 of the Texas Property Code. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of Landlord or the individual partners, directors, officers, members or shareholders of Landlord or against Landlord's partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease.

16. **Mechanics' Liens**. Tenant shall fully and promptly pay all sums necessary for the costs or repairs, alterations, improvements, charges or other work done by Tenant on the Premises. Tenant shall indemnify and hold Landlord harmless from and against any and all such costs and liabilities incurred by Tenant, and against any and all mechanics', materialmen's, or laborers' liens arising out of or from such work or the cost thereof which may be asserted, claimed or charged against the Premises. This obligation shall survive the termination of this Lease.

17. **Holding Over**. If Tenant fails to vacate the Premises at the Termination Date, then Tenant shall be a tenant at sufferance and Tenant shall pay as a daily Fixed Rental an amount equal to 1.2 times the daily Fixed Rental payable during the last month of the Term. In no event shall Tenant be liable for damages in connection with any holdover unless such holdover continues for a period of more than sixty (60) days. If Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover and Tenant fails to vacate the Premises within sixty (60) days after Landlord notifies Tenant of Landlord's inability to deliver possession, or perform improvements, Tenant shall be liable to Landlord for all reasonable damages that Landlord suffers from the holdover.

18. **Notices**. Any notice or other communication required or permitted to be given hereunder shall be in writing and deemed to be delivered, whether actually received or not, (a) if hand delivered or post marked by the U.S. Postal Service, postage prepaid, registered or certified mail, return receipt requested, upon deposit with the carrier, (b) if sent by courier or express mail where evidence of delivery is retained, upon deposit, or (c) sent via electronic mail as long as such notice is also simultaneously sent by one of the other methods approved hereunder. Any notice executed and delivered by either party's legal counsel (or any other authorized agent of such party) shall be fully effective as if the same had been executed and delivered by such party. Landlord and Tenant may execute this Lease by electronic counterparts or PDF counterparts delivered electronically, each of which shall be deemed an original for all purposes.

19. **Indemnification**.

a. Subject to Section 12 above, Tenant shall indemnify, defend and hold Landlord harmless from any claim for injury to person or damage to property accruing during the Term of this Lease and occurring within, on or about the Premises or arising from the negligence or intentional misconduct of Tenant, its agents, officers, employees, or contractors. For the avoidance of doubt, this Section 19(a) does not cover an environmental claim.

b. Tenant agrees that Tenant shall not knowingly receive, accept, store, dispose or release any hazardous or toxic substances on or in the Premises in violation of environmental laws, or transport any hazardous or toxic substances to or from the Premises in violation of environmental laws, except materials used in Tenant's ordinary course of business, and any such materials will be stored, used, and disposed of in compliance with all environmental laws. Tenant shall indemnify, defend and hold Landlord harmless from any claim relating to the environmental condition of the Premises accruing during the Term of this Lease and caused by Tenant or its agents, employees, contractors, or invitees (each, a "**Tenant Party**"). For the avoidance of doubt, Tenant shall have no liability to Landlord for any environmental condition of the Premises (or a related claim) that (a) was not caused by a Tenant Party, or (b) existed or accrued prior to the Commencement Date, even if caused by a Tenant Party, except to the extent a Tenant Party exacerbates such pre-existing condition.

These indemnity obligations shall survive the termination of this Lease as to claims that accrued during the Term of this Lease. For Landlord's indemnification rights to remain effective, Landlord must notify Tenant in writing within sixty (60) days of receiving notice of the claim.

Casualty. In the event of a casualty involving the Premises that will take more than ninety (90) days to repair, as reasonably estimated by Landlord (the "**Landlord's Rebuild Estimate**"), then Landlord or Tenant may terminate this Lease within thirty (30) days after delivery of Landlord's Rebuild Estimate. Landlord shall provide Landlord's Rebuild Estimate within thirty (30) days of the date of the applicable casualty. If neither party elects to terminate this Lease as provided above or if neither party has the right to terminate this Lease as provided above, then Landlord shall promptly commence to restore the Premises to substantially the same condition that existed prior to the fire or other casualty ("**Landlord's Repair Obligation**"), exclusive of any Alterations, additions, improvements, fixtures and equipment installed by or on behalf of Tenant (whether before or after the Commencement Date). Notwithstanding the foregoing, Landlord shall not be required to fulfill its Landlord's Repair Obligations to the extent that any lender requires that Landlord's insurance proceeds be applied to the payment of the mortgage debt or if the casualty is not a claim covered by insurance or if Landlord's insurance proceeds are insufficient to satisfy the cost of the repair work, and in such event Landlord shall have the right to terminate this Lease upon notice to Tenant. Notwithstanding the
20. foregoing, if Landlord's Repair Obligation has not been substantially completed within forty-five (45) days after the estimated restoration date set forth in Landlord's Rebuild Estimate (the last day of such 45-day period being the "**Casualty Termination Date**"), Tenant shall have the right to terminate this Lease effective upon thirty (30) days' prior written notice to Landlord delivered within sixty (60) days after the Casualty Termination Date; provided, however, that such termination shall be null and void if Landlord completes the Landlord's Repair Obligations prior to the expiration of such sixty (60) day period. In the event that this Lease is terminated as set forth herein, the Fixed Rental shall be apportioned as of the date of the damage and, provided Tenant is not in default, Tenant shall be entitled to a refund from Landlord of amounts for the Fixed Rental or other charges prepaid by Tenant to Landlord for the period arising after the date of the casualty. Tenant will have no claim to insurance proceeds with respect to insurance policies maintained by Landlord, condemnation award or proceeds in lieu of condemnation; provided that in the event of a casualty, Tenant shall be permitted to retain any insurance proceeds payable under any policy carried by Tenant. In the event the Premises are untenantable in whole or in part and neither party terminates as provided herein, then Fixed Rental shall be equitably abated to reflect the portion of the Premises not tenantable.

Condemnation. In the event that Landlord or Tenant receives notice of any pending or threatened condemnation or any public or quasi-public taking, use under law, eminent domain or private purchase in lieu thereof (a "**Taking**") of any portion of the industrial building(s) located on the Premises, then such party shall promptly notify the other in writing. If (i) any portion of the industrial building(s) location on the Premises or (ii) ten percent (10%) or more of the Premises will be taken during the Term of this Lease, then Landlord or Tenant shall have the right, exercisable by delivery of written notice to the other, to terminate this
21. Lease (or any portion hereof). All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds is expressly waived by Tenant; *provided*, *however*, Tenant may file a separate claim for Tenant's furniture, fixtures, equipment and other personal property, loss of goodwill and Tenant's reasonable relocation expenses, to the extent it will not reduce Landlord's award. Tenant hereby waives any right it may have pursuant to any applicable Laws and agrees that the provisions hereof shall govern the parties' rights in the event of any Taking.

22. **Miscellaneous**.

a. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between Landlord and Tenant, it being understood and agreed that neither the method of computation of Fixed Rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

b. Within thirty (30) days after the request of the other, at any time and from time to time, both Landlord and Tenant agree to execute, acknowledge and deliver an estoppel certificate certifying that (i) this Lease is in full force and effect, (ii) the date through which Fixed Rental and other charges due hereunder have been paid and (iii) to such party's knowledge, that no default by Landlord or Tenant, as appropriate, has occurred hereunder or specifying the nature of any such default.

c. Each of the parties represents and warrants that there are no unpaid claims for brokerage commission or finder's fees in connection with the execution of this Lease, and each agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim (including without limitation, the cost of legal fees in connection therewith). This obligation shall survive the termination of this Lease.

d. The laws of the state in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this Lease (without reference to choice of law principles).

e. Each provision of this Lease shall be construed in such manner as to give such provision the fullest legal force and effect possible. To the extent any provision herein (or part of such provision) is held to be unenforceable or invalid when applied to a particular set of facts, or otherwise, the unenforceability or invalidity of such provision (or part thereof) shall not affect the enforceability or validity of the remaining provisions hereof (or of the remaining parts of such provision), which shall remain in full force and effect, nor shall such unenforceability or invalidity render such provision (or part thereof) would be held legally enforceable and/or valid.

f. Notwithstanding anything to the contrary, in no event shall Landlord or Tenant be liable for consequential, punitive, exemplary or other damages (above and beyond actual damages only) in connection with this Lease.

g. In the event of litigation hereunder, the prevailing party shall be entitled to an award of its reasonable attorney's fees. Landlord and Tenant agree that should any suit, action or proceeding arising out of this Lease be instituted by any party hereto, such suit, action or proceeding shall be instituted only in a state or federal court in the county in which the Premises are located or, if no such court is located in that county, then in the state or federal court that is closest to the Premises (the "**Approved Jurisdiction**"). Landlord and Tenant each consent to the *in personam* jurisdiction of any state or federal court in the Approved Jurisdiction, and waive any objection to the venue of any such suit, action or proceeding. This Section 22(h) shall survive the expiration or termination of this Lease.

23. **Delivery of the Premises**. Tenant acknowledges and agrees the Premises are delivered by Landlord and accepted by Tenant in its present **"AS IS, WHERE IS, WITH ALL FAULTS"** condition as of the Commencement Date. **Tenant acknowledges that it has been provided access and ample opportunity to inspect the Premises and its existing condition, improvements and systems and, except as expressly provided otherwise in this Lease, is not relying upon any warranty or representation of Landlord or its agents regarding the condition, adequacy or suitability of the same for Tenant's intended purpose, LANDLORD HEREBY EXPRESSLY DISCLAIMING ANY SUCH WARRANTY. Landlord shall have no liability or obligation to any Tenant Party for any pre-existing environmental condition existing as of the Effective Date, except to the extent Landlord, its affiliates, agents or contractors exacerbate such condition.**

24. **No Contractual or Statutory Lien**. Landlord hereby waives any contractual or statutory lien on the goods, wares, or equipment of Tenant located at the Premises.

25. **Attornment**. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgagee made by Landlord covering any part of the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

26. **Priority of Lease**. Upon written request of Landlord or the holder or of a proposed holder of any mortgage now or hereafter covering or to cover any part of the Premises, Tenant will subordinate its rights under this Lease to the lien of such mortgage and to all advances made or to be made upon the security thereof, and Tenant shall, within ten (10) business days after written demand therefor, execute, acknowledge, and deliver an instrument, in the form customarily used by such encumbrance holder, and reasonably satisfactory to Tenant, effecting such subordination; provided, however, as a condition to such subordination, Landlord shall cause such lienholder to sign a commercially reasonable subordination and non-disturbance agreement.

27. **OFAC.** Landlord hereby represents and warrants to Tenant that Landlord is not acting, directly or indirectly for, or on behalf of, any person, group, entity or nation named by any Executive Order of the President of the United States of America (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department, as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, or nation pursuant to any law that is enforced or administered by the United States Office of Foreign Assets Control, and is not engaging in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

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EXECUTED on the dates set forth below to be effective as of the date first above written.

TENANT:

TUESDAY MORNING PARTNERS, LTD.,
a Texas limited partnership

By: Days of the Week, Inc.,
a Delaware corporation,
its General Partner

By: /s/ Steven R. Becker
Name: Steven R. Becker
Title: Chief Executive Officer

Address:

6250 LBJ Freeway
Dallas, Texas 75240
Attention: Jim Spisak
E-Mail: jspisak@tuesdaymorning.com &
legal@tuesdaymorning.com

With a copy to:

Haynes and Boone LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attention: Brack Bryant
E-mail: brack.bryant@haynesboone.com

Signature Page to Lease

LANDLORD:

14303 INWOOD ROAD, LP,
a Texas limited partnership

By: 14303 Inwood Road GP, LLC
a Texas limited liability company,
its General Partner

By: /s/ Michael C. O'Malley
Name: Michael C. O'Malley
Title: Manager

Address:

14303 Inwood Road, LP
3800 N. Lamar Blvd, Suite 350
Austin, Texas 78756
Attention: Brett Zimmerman
Email: bzimmerman@pennybackercap.com

With a copy to:

Jackson Walker L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
Attention: Kati Orso
E-mail: korso@jw.com

Signature Page to Lease

EXHIBIT A

LEGAL DESCRIPTION

14303 INWOOD ROAD:

BEING ALL OF LOT 1, BLOCK A OF TUESDAY MORNING ADDITION, AN ADDITION TO THE CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 2003011, PAGE 312, DEED RECORDS, DALLAS COUNTY, TEXAS.

4400-4404 BELTWOOD & 14621 INWOOD ROAD:

BEING ALL OF TUESDAY MORNING BELTWOOD ADDITION, LOT 1, BLOCK A, A PORTION OF BLOCK E, BELTWOOD BUSINESS PARK, SECOND INSTALLMENT, AN ADDITION TO THE CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT RECORDED IN INSTRUMENT NO. 200600276647 OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS AND BEING PART OF LOTS 1, 2 AND 3 OF INWOOD PARK NORTH, AN ADDITION TO THE CITY OF ADDISON, ACCORDING TO THE PLAT RECORDED IN VOLUME 79234, PAGE 1 DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 IRON ROD WITH ORANGE CAP STAMPED "P&C 100871" FOUND FOR CORNER IN THE EAST LINE OF SAID TUESDAY MORNING ADDITION AT THE NORTHWEST CORNER OF SAID INWOOD ADDITION AND THE SOUTHWEST CORNER OF LOT 1, MINIWOOD ADDITION, AN ADDITION TO THE TOWN OF ADDISON ACCORDING TO THE PLAT RECORDED IN VOLUME 82194, PAGE 2965 D.R.D.C.T.;

THENCE NORTH 80°45'00" EAST, WITH THE COMMON LINE BETWEEN SAID INWOOD ADDITION AND MINIWOOD ADDITION, A DISTANCE OF 570.00 FEET TO 1/2 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "KADLECK

3952” FOUND FOR CORNER AT THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED BY DEED AS TRACT II TO FRIDAY MORNING INC AS RECORDED IN VOLUME 91213, PAGE 2336 D.R.D.C.T.;

THENCE ALONG SAID FRIDAY MORNING TRACT II THE FOLLOWING CALLS:

SOUTH 09°15’00” EAST, A DISTANCE OF 97.87 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

SOUTH 16°49’00” EAST, A DISTANCE OF 216.67 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER IN THE NORTH LINE OF A 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT;

NORTH 89°49’46” EAST, WITH THE NORTH LINE OF SAID EASEMENT, A DISTANCE OF 224.48 FEET TO AN “X” CUT IN CONCRETE FOUND FOR CORNER IN THE WEST LINE OF INWOOD ROAD (A 60 FOOT PUBLIC RIGHT-OF-WAY);

THENCE SOUTH 16°49’00” EAST, WITH SAID WEST LINE OF INWOOD ROAD, A DISTANCE OF 52.19 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER IN SAID WEST LINE OF INWOOD ROAD, SAID ROD BEING THE NORTHEAST CORNER OF TRACT I OF SAID FRIDAY MORNING TRACT;

THENCE ALONG SAID FRIDAY MORNING TRACT II THE FOLLOWING CALLS:

SOUTH 89°49’46” WEST, WITH THE SOUTH LINE OF SAID EASEMENT A DISTANCE OF 203.61 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

SOUTH 00°10’14” EAST. DEPARTING SAID SOUTH LINE A DISTANCE OF 98.81 FEET TO AN “X” CUT IN CONCRETE FOUND FOR CORNER;

NORTH 89°49’46” EAST, A DISTANCE OF 10.00 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” SET FOR CORNER:

SOUTH 16°49’00” EAST, A DISTANCE OF 216.00 FEET TO AN “X” CUT IN CONCRETE FOUND FOR CORNER IN THE SOUTH LINE OF SAID INWOOD ADDITION AND THE NORTH LINE OF A TEXAS UTILITIES ELECTRIC CO TRACT;

THENCE SOUTH 89°49’46” WEST WITH THE SOUTH LINE OF SAID INWOOD ADDITION AND THE NORTH LINE OF SAID TEXAS UTILITIES TRACT, A DISTANCE OF 748.22 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” SET FOR CORNER, SAID CORNER BEING THE SOUTHWEST CORNER OF SAID INWOOD ADDITION AND THE SOUTHEAST CORNER OF AFOREMENTIONED TUESDAY MORNING ADDITION;

THENCE ALONG SAID TUESDAY MORNING ADDITION THE FOLLOWING CALLS:

NORTH 87°15’17” WEST, A DISTANCE OF 800.81 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER IN THE EAST LINE OF GILLIS ROAD (A 60 FOOT PUBLIC RIGHT-OF-WAY);

NORTH 00°09’17” WEST, WITH SAID EAST LINE, A DISTANCE OF 335.45 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER;

NORTH 46°17’43” EAST, A DISTANCE OF 20.67 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER IN THE SOUTH LINE OF BELTWOOD PARKWAY SOUTH (A 60 FOOT PUBLIC RIGHT-OF-WAY);

SOUTH 87°15’17” EAST, A DISTANCE OF 380.22 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER AND THE BEGINNING OF A CURVE TO THE LEFT WITH A RADIUS OF 100.00 FEET AND A CHORD WHICH BEARS NORTH 46°17’23” EAST FOR 144.97 FEET;

ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 92°54’39” AND AN ARC LENGTH OF 162.16 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER IN THE EAST LINE OF BELTWAY PARKWAY EAST (A 60 FOOT PUBLIC RIGHT-OF-WAY);

NORTH 00°09’17” WEST, WITH SAID EAST LINE, A DISTANCE OF 394.80 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER, SAID ROD BEING THE SOUTHWEST CORNER OF LOT 2, BLOCK A OF DALLAS SEMICONDUCTOR BUSINESS PARK II AN ADDITION TO THE CITY OF FARMERS BRANCH RECORDED IN VOLUME 2004084, PAGE 51 D.R.D.C.T.;

SOUTH 89°57’34” EAST, A DISTANCE OF 300.00 FEET TO A 1/2 IRON ROD WITH ORANGE CAP STAMPED “P&C 100871” FOUND FOR CORNER, SAID ROD BEING THE SOUTHEAST CORNER OF SAID SEMICONDUCTOR ADDITION;

SOUTH 00°09’17” EAST, FOR A DISTANCE OF 294.59 TO THE POINT OF BEGINNING AND CONTAINING 19.512 ACRES, OR 849,826 SQUARE FEET OF LAND, MORE OR LESS.

14601, 14603 AND 14639-14647 INWOOD ROAD:

TRACT I:

BEING A 1.556 ACRE (67,759 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOSIAH PANCOAST SURVEY, ABSTRACT NO. 1146, DALLAS COUNTY, TEXAS AND BEING PART OF LOT 1 AND PART OF LOT 2 OF INWOOD PARK NORTH, AN ADDITION TO THE TOWN OF ADDISON, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 79234, PAGE 1 DEED RECORDS, DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED “P&C 100871” SET FOR CORNER IN THE SOUTHWESTERLY LINE OF INWOOD ROAD (A 60 FOOT PUBLIC RIGHT-OF-WAY), SAID ROD BEING SOUTH 16°49’00” EAST, A DISTANCE OF 26.09 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1 AND THE SOUTHEAST CORNER OF LOT 3 OF SAID INWOOD PARK NORTH ADDITION;

THENCE SOUTH 16°49’00” EAST, ALONG SAID SOUTHWESTERLY LINE OF INWOOD ROAD AND THE NORTHEASTERLY LINE OF SAID LOT 1, FOR A DISTANCE OF 319.14 FEET TO A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED “P&C 100871” SET FOR CORNER, SAID ROD BEING THE SOUTHEAST CORNER OF SAID LOT 1 AND IN THE NORTH LINE OF A TEXAS UTILITIES ELECTRIC COMPANY RIGHT-OF-WAY;

THENCE SOUTH 89°49’46” WEST, DEPARTING SAID SOUTHWESTERLY LINE OF INWOOD ROAD AND ALONG THE SOUTH LINE OF SAID LOT 1 AND SAID NORTH LINE OF TEXAS UTILITIES ELECTRIC COMPANY RIGHT-OF-WAY, PASSING THE SOUTHWEST CORNER OF SAID LOT 1 AND THE SOUTHEAST CORNER OF AFOREMENTIONED LOT 2 AT A DISTANCE OF 200.40 FEET, CONTINUING FOR A TOTAL DISTANCE OF 223.15 FEET TO A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED “P&C 100871” SET FOR CORNER;

THENCE NORTH 16°49’00” WEST, DEPARTING THE SOUTH LINE OF SAID LOT 2 AND TRAVELING OVER AND ACROSS SAID LOT 2, FOR A DISTANCE OF 216.00 FEET TO AN “X” CUT IN CONCRETE SET FOR CORNER;

THENCE SOUTH 89°49’46” WEST FOR A DISTANCE OF 10.00 FEET TO AN “X” CUT IN CONCRETE SET FOR CORNER;

THENCE NORTH 00°10’14” WEST FOR A DISTANCE OF 98.81 FEET TO A 1/2 INCH IRON ROD FOUND FOR A CORNER IN THE SOUTH LINE OF A 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT AS SHOWN ON AFOREMENTIONED PLAT OF INWOOD PARK NORTH ADDITION;

THENCE NORTH 89°49’46” EAST, ALONG SAID SOUTH LINE OF 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT, FOR A DISTANCE OF 203.61 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.556 ACRES, OR 67,759 SQUARE FEET OF LAND, MORE OR LESS.

TRACT II:

BEING A 1.631 ACRE (71,041 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOSIAH PANCOAST SURVEY, ABSTRACT NO. 1146, DALLAS COUNTY, TEXAS AND BEING PART OF LOT 3 OF INWOOD PARK NORTH, AN ADDITION TO THE TOWN OF ADDISON, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 79234, PAGE 1 DEED RECORDS, DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED “P&C 100871” SET FOR CORNER IN THE SOUTHWESTERLY LINE OF INWOOD ROAD (A 60 FOOT PUBLIC RIGHT-OF-WAY), SAID ROD BEING THE NORTHEAST CORNER OF SAID LOT 3 AND THE SOUTHEAST CORNER OF LOT 2, BLOCK A OF INWOOD AUTO/BEVERAGE ADDITION, AN ADDITION TO THE TOWN OF ADDISON, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN INSTRUMENT NO. 200600248924 OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS;

THENCE SOUTH 16°49’00” EAST, ALONG SAID SOUTHWESTERLY LINE OF INWOOD ROAD AND THE NORTHEASTERLY LINE OF SAID LOT 3, FOR A DISTANCE OF 351.14 FEET TO AN “X” CUT IN CONCRETE SET FOR CORNER, SAID “X” BEING THE NORTHEAST CORNER OF A 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT AS SHOWN ON AFOREMENTIONED PLAT OF INWOOD PARK NORTH ADDITION, SAID “X” ALSO BEING NORTH 16°49’00” WEST, A DISTANCE OF 26.09 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 3 AND THE NORTHEAST CORNER OF LOT 1 OF SAID INWOOD PARK NORTH ADDITION;

THENCE SOUTH 89°49’46” WEST, DEPARTING SAID SOUTHWESTERLY LINE OF INWOOD ROAD AND ALONG THE NORTH LINE OF SAID 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT, OVER AND ACROSS SAID LOT 3 AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 3, FOR A DISTANCE OF 224.48 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 16°49’00” WEST, DEPARTING SAID NORTHERLY LINE OF 50 FOOT ACCESS, UTILITY AND DRAINAGE EASEMENT, FOR A DISTANCE OF 216.67 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 09°15’00” WEST FOR A DISTANCE OF 97.87 FEET TO A 1/2 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED “KADLECK 3952” FOUND FOR CORNER IN THE NORTHERLY LINE OF SAID LOT 3 AND THE SOUTHERLY LINE OF AFOREMENTIONED LOT 2 OF INWOOD AUTO/BEVERAGE ADDITION;

THENCE NORTH 80°45’00” EAST, ALONG SAID NORTHERLY LINE OF LOT 3, AND THE SOUTHERLY LINE OF SAID LOT 2 OF INWOOD AUTO/BEVERAGE ADDITION, FOR A DISTANCE OF 203.96 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.631 ACRES, OR 71,041 SQUARE FEET OF LAND, MORE OR LESS.

EXHIBIT B

TENANT INSURANCE REQUIREMENTS

Tenant, at its sole cost and expense, shall procure and maintain throughout the Term of the Lease the following policies of insurance (which may be part of umbrella policies):

(a) property insurance causing Tenant's leasehold improvements and business personal property (sometimes also referred to as "fixtures and contents") at the Premises to be insured under the broadest available special form of property coverage, sometimes referred to as "all-risk" coverage (such as the form identified as CP 10 30, and any successor form, published by Insurance Services Office, Inc.), such insurance coverage **(i)** to be in the full amount of the replacement cost of all insured property, **(ii)** to include

coverage for the loss of business income, in an amount deemed reasonable by Tenant, **(iii)** to contain no deductible or self-insured retention in excess of $100,000.00, **(iv)** to contain no coinsurance penalty clause, and (v) to include a waiver of subrogation in favor of Landlord; and

(b) combination of commercial general liability and umbrella insurance insuring both Landlord and Tenant against all claims, demands or actions for bodily injury, property damage, personal and advertising injury arising out of or in connection with Tenant's use or occupancy of the Premises, or by the condition of the Premises, with a limit of not less than $10,000,000 per occurrence and aggregate (and no offset for occurrences on property other than the Premises), and with coverage for contractual liability naming Landlord as Additional Insured, and to include a waiver subrogation in favor of the Landlord; and

(c) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state where the Premises is located, together with employer's liability insurance in an amount not less than $1,000,000.00 each accident, $1,000,000.00 disease policy limit, and $1,000,000.00 disease each employee; the full limits of insurance are to apply per location, and include a waiver of subrogation in favor of Landlord; and

(d) automobile liability insurance covering all owned, non-owned, and hired vehicles with a $1,000,000 per accident limit for bodily injury and property damage; and

(e) during any period when construction work is being done in or on the Premises, such additional insurance as Landlord may reasonably require; and

(f) business interruption insurance in the unallocated amount of at least $10,000,000; and

(g) All policies must be written by insurance companies whose rating in the most recent Best’s Rating Guide, is not less than A(-): VII; and

(h) Certificates of Insurance evidencing the required coverages must be delivered to the Landlord prior to the commencement of the Lease.

Exhibit 10.5

FORM OF INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement"), dated as of _____, 20__, is made by and between Tuesday Morning Corporation, a Delaware corporation (the "Corporation"), and _____ (the "Indemnitee").

RECITALS

A. The Corporation recognizes that competent and experienced persons are increasingly reluctant to serve or to continue to serve as directors or officers of corporations unless they are protected by comprehensive liability insurance and indemnification, due to increased exposure to litigation costs and risks resulting from their service to such corporations, and due to the fact that the exposure frequently bears no reasonable relationship to the compensation of such directors and officers;

B. The statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous, or conflicting, and therefore fail to provide such directors and officers with adequate, reliable knowledge of legal risks to which they are exposed or information regarding the proper course of action to take;

C. The Corporation and Indemnitee recognize that plaintiffs often seek damages in such large amounts and the costs of litigation may be so enormous (whether or not the case is meritorious), that the defense and/or settlement of such litigation is often beyond the personal resources of directors and officers and the exposure from such litigation frequently bears no reasonable relationship to the compensation of such directors and officers;

D. The Corporation believes that it is unfair for its directors and officers to assume the risk of huge judgments and other expenses which may occur in cases where the director or officer was not culpable;

E. The Corporation, after reasonable investigation, has determined that the liability insurance coverage presently available to the Corporation may be inadequate in certain circumstances to cover all possible exposure for which Indemnitee should be protected. The Corporation believes that the interests of the Corporation and its stockholders would best be served by a combination of such insurance and the indemnification by the Corporation of the directors and officers of the Corporation;

F. The Corporation's Bylaws require the Corporation to indemnify its directors and officers to the fullest extent not prohibited by the Delaware General Corporation Law ("DGCL"). The Bylaws expressly provide that the indemnification provisions set forth therein are not exclusive, and contemplate that agreements may be entered into between the Corporation and its directors and officers with respect to indemnification;

G. Section 145 of the DGCL, empowers the Corporation to indemnify its officers, directors, employees and agents by agreement and to indemnify persons who serve, at the request of the Corporation, as the directors, officers, employees or agents of other corporations or enterprises, and expressly provides that the indemnification provided by Section 145 is not exclusive;

H. Section 102(b)(7) of the DGCL allows a corporation to include in its certificate of incorporation a provision limiting or eliminating the personal liability of a director for monetary damages in respect of claims by the corporation or its stockholders for breach of certain fiduciary duties, and the Corporation has so provided in its Certificate of Incorporation that each Director shall be exculpated from such liability to the maximum extent permitted by the DGCL;

I. The Corporation desires to provide the Indemnitee with specific contractual assurances of the Indemnitee's rights to full indemnification against litigation risks and reasonable expenses (regardless, among other things, of any amendment to or revocation of the Certificate of Incorporation and Bylaws or any change in control or business combination transaction relating to the Corporation or the composition of its Board of Directors) in accordance with the terms hereof and, to the extent insurance is available as provided herein, the coverage of the Indemnitee under the Corporation's directors' and officers' liability insurance policies;

J. The Board of Directors has determined that contractual indemnification as set forth herein is not only reasonable and prudent but also promotes the best interests of the Corporation and its stockholders;

K. The Corporation desires and has requested Indemnitee to serve or continue to serve as a director or officer of the Corporation free from undue concern for unwarranted claims for damages arising out of or related to such services to the Corporation;

L. Indemnitee is willing to serve, continue to serve or to provide additional service for or on behalf of the Corporation on the condition that he is furnished the indemnity provided for herein; and

M. This Agreement is a supplement to and in furtherance of the Bylaws of the Corporation and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder except as otherwise expressly provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following definitions shall apply:

(a) The term "Proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed claim, action, suit, proceeding, or arbitration, whether civil, criminal, administrative, investigative, appellate or arbitral, and whether formal or informal, and which shall include any proceeding by or in the right of the Corporation.

(b) The phrase "by reason of the fact that Indemnitee is or was a director or officer of the Corporation, or is or was serving at the Corporation's request as a director, officer, employee or agent of any Other Enterprise", or any substantially similar phrase, shall be broadly construed and shall include, without limitation, any actual or alleged act or omission to act.

(c) The term "Expenses" shall be broadly and reasonably construed and shall include, without limitation, all direct and indirect expenses, costs or charges of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements, appeal bonds, other out-of-pocket costs and reasonable compensation for time spent by Indemnitee for which Indemnitee is not otherwise compensated by the Corporation or any third party, provided that the rate of compensation and estimated time involved is approved by the Corporation's Board of Directors, which approval shall not be unreasonably withheld, conditioned or delayed), actually and reasonably incurred by Indemnitee in connection with the investigation, preparation, prosecution, defense, settlement, arbitration or appeal of, or the giving of testimony in, a Proceeding or establishing or enforcing a right to indemnification under this Agreement, the Corporation's Certificate of Incorporation or Bylaws, Section 145 of the DGCL or otherwise.

(d) The terms "judgments, fines and amounts paid in settlement" shall be broadly construed and shall include, without limitation, all direct and indirect payments of any type or nature whatsoever (including, without limitation, all penalties and amounts required to be forfeited or reimbursed to the Corporation), as well as any penalties or excise taxes assessed on a person with respect to an employee benefit plan.

(e) The term "Corporation" shall include, without limitation and in addition to the resulting corporation, any constituent corporation or any Other Enterprise (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director or officer of such constituent corporation or Other Enterprise, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of any Other Enterprise, shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation or Other Enterprise as if its separate existence had continued.

(f) The term "Other Enterprise" shall include, without limitation, any other corporation, partnership, joint venture, trust or employee benefit plan.

(g) The phrase "serving at the request of the Corporation", or any substantially similar phrase, shall include, without limitation, any service as a director or officer of the Corporation which involves services as a director, officer, employee or agent with respect to any Other Enterprise, including any employee benefit plan.

(h) A person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Agreement.

(i) The term "defense" shall include investigations of any Proceeding, appeals of any Proceeding and defensive assertion of any cross-claim or counterclaim.

(j) The term "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 Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning 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" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Corporation agrees to pay the reasonable fees of the Independent Counsel arising out of or relating to this Agreement or its engagement pursuant hereto.

(k) The term "Change of Control" means (i) an acquisition by any person (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of beneficial ownership of fifteen percent (15%) or more of the combined voting power of the Corporation's then outstanding voting securities; (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Corporation and any new director whose election by the Board of Directors or nomination for election by the Corporation's stockholders was approved by a vote of at least two-thirds (2/3) 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 (other than directors elected to the Board of Directors as part of a threatened or actual proxy contest, including by reason of an agreement intended to avoid or settle any threatened or actual proxy contest), cease for any reason to constitute a majority thereof; (iii) the consummation of a merger or consolidation involving the Corporation if the stockholders of the Corporation, immediately before such merger or consolidation, do not own, immediately following such merger or consolidation, more than eighty percent (80%) of the combined voting power of the outstanding voting securities of the resulting entity in substantially the same proportion as their ownership of voting securities immediately before such merger or consolidation; (iv) the consummation of the sale or other disposition of all or substantially all of the assets of the Corporation; (v) approval by the stockholders of the Corporation of a complete liquidation or dissolution of the Corporation; (vi) the Corporation shall file or have filed against it, and such filing shall not be dismissed, any bankruptcy or insolvency proceedings, or a trustee, administrator or creditors committee shall be appointed to manage or supervise the affairs of the Corporation; or (vii) the occurrence of any other event of a nature that would be required to be reported in response to either Item 5.01 of Form 8-K or 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), whether or not the Corporation is then subject to such reporting requirement. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur solely because fifteen percent (15%) or more of the then outstanding voting securities is acquired by (i) a trustee or other fiduciary holding securities under one or more employee benefit plans maintained by the Corporation or any of its subsidiaries or (ii) any entity that, immediately prior to such acquisition, is owned directly or indirectly by the stockholders of the Corporation in the same proportion as their ownership of shares in the Corporation immediately prior to such acquisition.

Section 2. Indemnification.

(a) Subject to Sections 4, 6 and 8 of this Agreement, to the fullest extent not prohibited by the laws of the State of Delaware, as the same now exists or may hereafter be amended (but only to the extent any such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), the Corporation shall indemnify, defend and hold harmless, Indemnitee if Indemnitee was or is a party or is threatened to be made a party to, or a witness of, or is otherwise involved in, any Proceeding by reason of the fact that Indemnitee is or was or has agreed to serve as a director or officer of the Corporation, or is or was serving at the Corporation's request as a director, officer, employee or agent of any Other Enterprise, or by reason of any action taken or alleged to have been taken, or omitted to be taken or alleged to be omitted to be taken, in such capacity.

(b) Subject to Sections 4, 6 and 8 of this Agreement, to the fullest extent not prohibited by the laws of the State of Delaware, as the same now exists or may hereafter be amended (but only to the extent any such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), the indemnification provided by this Section 2 shall be from and against Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding, but shall only be provided 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 Corporation, and, with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(c) Indemnitee shall be deemed to have met the applicable standard of conduct under the laws of the State of Delaware for entitlement to indemnification if Indemnitee’s action or inaction that is the subject of the Proceeding is based on reliance in good faith upon the records of the Corporation or upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or Committees of the Board or Directors, or by any other person (including, without limitation, legal counsel, investment bankers, accountants, auditors or appraisers) as to matters the Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation. The provisions of this subsection (c) shall not be deemed to be exclusive or limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct under the laws of the State of Delaware for entitlement to indemnification.

(d) In the case of any Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director or officer of the Corporation, or is or was serving at the Corporation's request as a director, officer, employee or agent of any Other Enterprise, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee’s behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that if applicable law so requires, no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation unless, and only to the extent that a Delaware Court of Chancery ("Delaware Court") or the court in which such Proceeding was brought shall determine upon application that such indemnification may be made.

(e) The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, 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 Corporation, and, with respect to any criminal Proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 3. Successful Defense; Partial Indemnification. To the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 2 hereof or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against Expenses actually and reasonably incurred in connection therewith. For purposes of this Agreement and without limiting the foregoing, if any Proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal Proceeding, an adjudication that Indemnitee had reasonable cause to believe Indemnitee's conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his service to the Corporation, a witness in any Proceeding to which Indemnitee is not a party, such Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by or on behalf of such Indemnitee in connection therewith.

If Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for some or a portion of the Expenses, judgments, fines or amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding, or in defense of any claim, issue or matter therein, and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such Expenses, judgments, fines or amounts paid in settlement to which Indemnitee is entitled. Any necessary determination regarding allocation or apportionment of Expenses between successful and unsuccessful claims, issues or matters shall be made by the person, persons or entity empowered or selected under Section 4(a) to determine whether Indemnitee is entitled to indemnification.

Section 4. Determination That Indemnification Is Proper.

(a) Any indemnification hereunder shall (unless otherwise ordered by a court) be made by the Corporation unless a determination is made that indemnification of such person is not proper in the circumstances because he or she has not met the applicable standard of conduct set forth in Section 2(b) hereof. Any such determination shall be made (i) by a majority vote of the directors who are not parties to the Proceeding in question ("disinterested directors"), even if less than a quorum, (ii) by a majority vote of a committee of disinterested directors designated by majority vote of disinterested directors, even if less than a quorum, (iii) by a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote on the matter, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the Proceeding in question, (iv) by Independent Counsel, or (v) by a court of competent jurisdiction; *provided*, *however*, that following a Change of Control of the Corporation, any determinations, whether arising out of acts, omissions or events occurring prior to or after the Change of Control of the Corporation, shall be made by Independent Counsel selected in the manner described in Section 4(c). Such Independent Counsel shall determine as promptly as practicable whether and to what extent Indemnitee would be permitted to be indemnified under applicable law and shall render a written opinion to the Corporation and to Indemnitee to such effect.

(b) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 4(a) hereof and no Change of Control has occurred, the Independent Counsel shall be selected as provided in this Section 4(b). In such case, the Independent Counsel shall be selected by the Board of Directors and the Corporation shall give prompt written notice to the Indemnitee advising the Indemnitee of the Independent Counsel so selected. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation, as the case may be, 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 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made in proper form, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Corporation or Indemnitee may petition the Delaware Court or a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Corporation's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 4(a) hereof. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 4(a) hereof, and the Corporation shall pay all reasonable fees and expenses incident to the procedures of this Section 4(b) regardless of the manner in which such Independent Counsel was selected or appointed.

(c) Notwithstanding anything to the contrary herein, if a Change of Control has occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board of Directors) and Indemnitee

shall give prompt written notice to the Corporation advising it of the identity of the Independent Counsel so selected. The Corporation may, within ten (10) days after such written notice of selection shall have been given, deliver to the Indemnitee, as the case may be, 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 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made in proper form, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Corporation or Indemnitee may petition the Delaware Court or a court of competent jurisdiction for resolution of any objection which shall have been made by the Corporation to the Indemnitee's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 4(a) hereof. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 4(a) hereof, and the Corporation shall pay all reasonable fees and expenses incident to the procedures of this Section 4(c) regardless of the manner in which such Independent Counsel was selected or appointed.

Section 5. Advance Payment of Expenses; Notification and Defense of Claim.

(a) Any Expenses incurred by Indemnitee in defending a Proceeding, or in connection with an enforcement action pursuant to Section 6(b), shall be paid by the Corporation to Indemnitee in advance of the final disposition of such Proceeding as soon as practicable but in any event no later than twenty (20) days after receipt by the Corporation of (i) a statement or statements from Indemnitee requesting such advance or advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses; provided, however, that Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would jeopardize the attorney-client privilege), and (ii) an undertaking by or on behalf of Indemnitee to repay such amount or amounts, only if, and to the extent that, there is a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee is not entitled to be indemnified by the Corporation as authorized by this Agreement, Bylaws, applicable law or otherwise. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment. Advances shall be unsecured and interest-free. Notwithstanding the foregoing, the obligation of the Corporation to advance Expenses pursuant to this Section 5, its Certificate of Incorporation, its Bylaws or otherwise, shall be subject to the condition that, if, when and to the extent that the Corporation determines, in accordance with the procedures, indemnification and evidentiary standards, presumptions, burdens of proof and other applicable provisions set forth herein, that Indemnitee would not be permitted to be indemnified under applicable law, the Corporation may terminate further advances of Expenses and shall be reimbursed within sixty (60) days of such determination, by Indemnitee (who hereby agrees to reimburse the Corporation) for such amounts previously paid by the Corporation pursuant to this Section 5; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Corporation that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and the Corporation shall continue to advance Expenses as provided herein and Indemnitee shall not be required to reimburse the Corporation for any advance of Expenses until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

(b) Promptly after receipt by Indemnitee of written notice of the commencement of any Proceeding, Indemnitee shall, if a claim thereof is to be made against the Corporation hereunder, notify the Corporation of the commencement thereof. The failure to promptly notify the Corporation of the commencement of the Proceeding, or Indemnitee's request for indemnification, will not relieve the Corporation from any liability that it may have to Indemnitee hereunder, except to the extent the Corporation is prejudiced in its defense of such Proceeding as a result of such failure.(c) Notwithstanding any other provision of this Agreement to the contrary, to the extent that Indemnitee is, by reason of Indemnitee's corporate status with respect to the Corporation or any Other Enterprise which Indemnitee is or was serving or has agreed to serve at the request of the Corporation, a witness or otherwise participates in any Proceeding at a time when Indemnitee is not a party in the Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 6. Procedure for Indemnification.

(a) To obtain indemnification (other than as provided otherwise herein) under this Agreement, Indemnitee shall promptly submit to the Corporation a written request, including therein or therewith 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. The Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) The determination whether to grant Indemnitee's indemnification request (whether made by the Board of Directors or one of its committees, Independent Counsel, or the Corporation's stockholders) shall be made promptly, and in any event within sixty (60) days following receipt of a request for indemnification pursuant to Section 6(a). The right to indemnification as granted by Section 2 of this Agreement shall be enforceable by Indemnitee in any court of competent jurisdiction if the Corporation denies such request, in whole or in part, or fails to respond within such sixty-day (60) period. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of Expenses under Section 5 hereof where the required undertaking, if any, has been received by the Corporation) that Indemnitee has not met the standard of conduct set forth in Section 2 hereof, but the burden of proving such defense by clear and convincing evidence shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors or one of its committees, its Independent Counsel, and its stockholders) to have made a determination prior to the commencement of such action that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in Section 2 hereof, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors or one of its committees, its Independent Counsel, and its stockholders) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has or has not met the applicable standard of conduct. The Indemnitee's Expenses incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such Proceeding or otherwise shall also be indemnified by the Corporation.

(c) The Indemnitee shall be presumed to be entitled to indemnification under this Agreement upon submission of a request for indemnification pursuant to this Section 6, and the Corporation shall have the burden of proof in overcoming that presumption in reaching a determination contrary to that presumption. Such presumption shall be used as a basis for a determination of entitlement to indemnification unless the Corporation overcomes such presumption by clear and convincing evidence.

(d) The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Corporation shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 7. Insurance and Subrogation.

(a) The Corporation represents that it currently has in effect the following policy or policies of director and officer liability insurance (the "Insurance Policies") which names or covers Indemnitee as an insured:

Insurer	Policy No.	Limit	Retention

(b) So long as Indemnitee shall continue to serve as a director or officer of the Corporation, or shall continue at the request of the Corporation to serve as a director or officer, employee or agent of any Other Enterprise, and thereafter so long as Indemnitee shall be subject to any possible claim or is a party or is threatened to be made a party to any Proceeding, by reason of the fact

that Indemnitee is or was a director or officer of the Corporation, or is or was serving in any of said other capacities at the request of the Corporation, the Corporation shall be required to maintain the Insurance Policies in effect or to obtain policies of directors' and officers' liability insurance from established and reputable insurers with coverage in at least the amount or amounts as prescribed by the Insurance Policies and which provides the Indemnitee with substantially the same rights and benefits as the Insurance Policies, and which coverage, rights and benefits shall, in any event, be as favorable to Indemnitee as are accorded to the most favorably insured of the Corporation's directors or officers, as the case may be ("Comparable D&O Insurance") unless, in the reasonable business judgment of the Board of Directors of the Corporation as it may exist from time to time, either (i) the premium cost for such Insurance Policies or Comparable D&O Insurance is materially disproportionate to the amount of coverage provided, or (ii) the coverage provided by such Insurance Policies or Comparable D&O Insurance is so limited by exclusions that there is insufficient benefit provided by such director and officer liability insurance; provided, however, that in the event that the Board of Directors makes such a determination, the Corporation shall provide notice to Indemnitee no less than ninety (90) days prior to the lapse or termination of coverage under the Insurance Policies or Comparable D&O Insurance.

(c) If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such claim, and any Proceeding in which such claim is asserted, to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall 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 claim or Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Corporation under this Agreement.

(d) In the event of any payment by the Corporation under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee with respect to any insurance policy, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights in accordance with the terms of such insurance policy. The Corporation shall pay or reimburse all Expenses actually and reasonably incurred by Indemnitee in connection with such subrogation.

(e) The Corporation shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (including, but not limited to, Expenses, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) if and to the extent that Indemnitee has otherwise actually received such payment under the Corporation's Certificate of Incorporation or Bylaws, or any insurance policy, contract, agreement or otherwise.

(f) Notwithstanding that the Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by Other Enterprises, the Company: (a) shall be the indemnitor of first resort with respect to which indemnification is required pursuant to this Agreement (i.e., its obligations to the Indemnitee are primary and any obligation of the Other Enterprises to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Indemnitee are secondary); and (b) shall be required to advance the full amount of expenses incurred by the Indemnitee and shall be liable for the full amount of all Expenses, without regard to any rights the Indemnitee may have against any of the Other Enterprises. No advancement or payment by the Other Enterprises on behalf of the Indemnitee with respect to any claim for which the Indemnitee has sought payment from the Company shall affect the immediately preceding sentence, and the Other Enterprises shall have a right of contribution and/or be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee against the Company. The Company and the Indemnitee agree that the Other Enterprises are express third party beneficiaries of the terms of this Section 7(f).

Section 8. Limitation on Indemnification. Notwithstanding any other provision herein to the contrary, the Corporation shall not be obligated pursuant to this Agreement**:**

(a) Claims Initiated by Indemnitee. To indemnify or advance expenses to Indemnitee with respect to a Proceeding (or part thereof) initiated by Indemnitee, except with respect to a Proceeding brought to establish or enforce a right to indemnification (which shall be governed by the provisions of Sections 6(b) and 8(b) of this Agreement), unless such Proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation or the Proceeding was commenced following a Change of Control.

(b) Action for Indemnification. To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any Proceeding instituted by Indemnitee to enforce or interpret this Agreement, unless Indemnitee is successful in establishing

Indemnitee's right to indemnification in such Proceeding, in whole or in part, or unless and to the extent that the Delaware Court or the court in such Proceeding shall determine that, despite Indemnitee's failure to establish his or her right to indemnification, Indemnitee is entitled to indemnity for such Expenses; provided, however, that nothing in this Section 8(b) is intended to limit the Corporation's obligation with respect to the advancement of Expenses to Indemnitee in connection with any such Proceeding instituted by Indemnitee to enforce or interpret this Agreement, as provided in Section 5 hereof.

(c) Claims Prohibited by Law. To indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(d) Certain Statutory Violations. To indemnify Indemnitee on account of any Proceeding with respect to which final judgment is rendered against Indemnitee for (i) payment or an accounting of profits arising from the purchase or sale by Indemnitee of securities in violation of Section 16(b) of the Exchange Act or any similar successor statute, or (ii) any reimbursement of the Corporation 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 Corporation, as required in each case under the Exchange Act (including any such reimbursements pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), Section 10D of the Exchange Act added by the Dodd-Frank Wall Street Reform and Consumer Protection Act or any rules or regulations implementing the foregoing, or the payment to the Corporation of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act).

(e) Non-compete and Non-disclosure. To indemnify Indemnitee in connection with Proceedings or claims involving the enforcement of non-compete and/or non-disclosure agreements or the non-compete and/or non-disclosure provisions of employment, consulting or similar agreements the Indemnitee may be a party to with the Corporation, or any subsidiary of the Corporation or any Other Enterprise.

Section 9. Mutual Acknowledgement. Both the Corporation and the Indemnitee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Corporation from indemnifying its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. The Indemnitee understands and acknowledges that the Corporation has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Corporation’s right under public policy to indemnify the Indemnitee.

Section 10. Certain Settlement Provisions. The Corporation shall have no obligation to indemnify Indemnitee under this Agreement for (a) amounts paid in settlement of any Proceeding without the Corporation's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, or (b) any judicial award if the Company was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action; *provided*, *however*, that if a Change of Control has occurred, the Corporation shall be liable for indemnification of Indemnitee for amounts paid in settlement if the Independent Counsel has approved the settlement. The Corporation shall not settle any Proceeding in any manner that would impose any fine or other obligation on Indemnitee without Indemnitee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 11. Savings Clause. If any provision or provisions of this Agreement shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify Indemnitee as to Expenses, judgments, fines and amounts paid in settlement with respect to any Proceeding, including an action by or in the right of the Corporation, to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated and to the full extent permitted by applicable law.

Section 12. Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for herein is held by a court of competent jurisdiction to be unavailable to Indemnitee in whole or in part, it is agreed that, in such event, the Corporation shall, to the fullest extent permitted by law, contribute to the payment of Indemnitee's Expenses, judgments, fines and amounts paid in settlement with respect to any Proceeding, or any claims, issues or matters in such

Proceeding, in an amount that is just and equitable in the circumstances, taking into account, among other things, the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive..

Section 13. Form and Delivery of Communications. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) if sent via facsimile, upon confirmation of facsimile transfer or, if sent via electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the address, facsimile number or electronic mail address set forth below, or to such other address, facsimile number or electronic mail address as may have been furnished hereafter to Indemnitee by the Corporation or to the Corporation by Indemnitee, as the case may be.

If to the Corporation:

_____

_____

_____

Attn: General Counsel
Facsimile: [•]
Electronic Mail Address: [•]

If to Indemnitee:

_____

_____

_____

Section 14. Nonexclusivity. Except as expressly provided herein, the provisions for indemnification, advancement of Expenses and contribution set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Corporation's Certificate of Incorporation or Bylaws, in any court in which a Proceeding is brought, the vote of the Corporation's stockholders or disinterested directors, other agreements or otherwise, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as a director or officer of the Corporation, or ceased serving at the Corporation's request as a director, officer, employee or agent of any Other Enterprise, and shall inure to the benefit of the heirs, executors, administrators and legal representatives of Indemnitee. However, no amendment or alteration of the Corporation's Certificate of Incorporation or Bylaws or any other agreement shall adversely affect the rights provided to Indemnitee under this Agreement.

Section 15. Enforcement. The Corporation shall be precluded from asserting in any judicial Proceeding that the procedures and presumptions of this Agreement are not valid, binding and enforceable. The Corporation agrees that its obligations set forth in this Agreement are unique and special, and that failure of the Corporation to comply with the provisions of this Agreement will cause irreparable and irremediable injury to Indemnitee, for which a remedy at law will be inadequate. As a result, in addition to any other right or remedy Indemnitee may have at law or in equity with respect to breach of this Agreement, Indemnitee shall be entitled to injunctive or mandatory relief directing specific performance by the Corporation of its obligations under this Agreement.

Section 16. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification of, and advancement of Expenses and contribution to, Indemnitee to the fullest extent now or hereafter permitted by law in accordance with the provisions of this Agreement.

Section 17. Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are expressly superseded by this Agreement.

Section 18. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 19. Successor and Assigns. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer, employee, agent of fiduciary (as applicable) of the Corporation or of any Other Enterprise.

Section 20. Service of Process and Venue. For purposes of any Proceedings to enforce this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any Proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court, 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 Proceeding arising out of or in connection with this Agreement, (iii) in the case of the Corporation, irrevocably appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, CT Corporation as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such Proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware. If a court of competent jurisdiction shall make a final determination that the provisions of the law of any state other than Delaware govern indemnification of, or advancement of Expenses or contribution to, its officers and directors by the Corporation, then the indemnification, advancement of Expenses and contribution provided under this Agreement shall in all instances be enforceable to the fullest extent permitted under such law, notwithstanding any provision of this Agreement to the contrary.

Section 22. Employment Rights. Nothing in this Agreement is intended to create in Indemnitee any right to employment or continued employment.

Section 23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument, notwithstanding that both parties are not signatories to the original or same counterpart.

Section 24. Headings. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 25. Section 409A. It is intended that any indemnification payment or advancement of Expenses made hereunder shall be exempt from Section 409A of the Internal Revenue Code of 1986, as amended, and the guidance issued thereunder ("Section 409A") pursuant to Treasury Regulation Section 1.409A-1(b)(10). Notwithstanding the foregoing, if any indemnification payment or advancement of Expenses made hereunder shall be determined to be "nonqualified deferred compensation" within the meaning of Section 409A, then (i) the amount of the indemnification payment or advancement of Expenses during one taxable year shall not affect the amount of the indemnification payments or advancement of Expenses during any other taxable year, (ii) the indemnification payments or advancement of Expenses must be made on or before the last day of the Indemnitee's taxable year following the year in which the expense was incurred, and (iii) the right to indemnification payments or advancement of Expenses hereunder is not subject to liquidation or exchange for another benefit.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto to be effective as of the date first above written.

TUESDAY MORNING CORPORATION

By _____
Name:
Title:

INDEMNITEE:

By _____
Name:

Cover	Dec. 31, 2020
Cover [Abstract]	
Document Type	8-K
Amendment Flag	false
Document Period End Date	Dec. 31, 2020
Current Fiscal Year End Date	--06-30
Entity File Number	0-19658
Entity Registrant Name	TUESDAY MORNING CORP/DE
Entity Central Index Key	0000878726
Entity Tax Identification Number	75-2398532
Entity Incorporation, State or Country Code	DE
Entity Address, Address Line One	6250 LBJ Freeway
Entity Address, City or Town	Dallas
Entity Address, State or Province	TX
Entity Address, Postal Zip Code	75240
City Area Code	972
Local Phone Number	387-3562
Written Communications	false
Soliciting Material	false
Pre-commencement Tender Offer	false
Pre-commencement Issuer Tender Offer	false
Entity Emerging Growth Company	false

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        "label": "City Area Code"
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        "label": "Country Region"
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        "documentation": "Cover page.",
        "label": "Cover [Abstract]"
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        "label": "Current Fiscal Year End Date"
       }
      }
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        "label": "Document Accounting Standard"
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      }
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      "r11",
      "r12"
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     "lang": {
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        "label": "Document Annual Report"
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       "role": {
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        "label": "Document Fiscal Period Focus"
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      }
     },
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       "role": {
        "documentation": "This is focus fiscal year of the document report in YYYY format. For a 2006 annual report, which may also provide financial information from prior periods, fiscal 2006 should be given as the fiscal year focus. Example: 2006.",
        "label": "Document Fiscal Year Focus"
       }
      }
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 "lang": {
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   "role": {
    "documentation": "The end date of the period reflected on the cover page if a periodic report. For all other reports and registration statements containing historical data, it is the date up through which that historical data is presented.  If there is no historical data in the report, use the filing date. The format of the date is YYYY-MM-DD.",
    "label": "Document Period End Date"
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  }
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    "label": "Document Period Start Date"
   }
  }
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    "label": "Document Quarterly Report"
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    "label": "Document Registration Statement"
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  }
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"dei_DocumentShellCompanyEventDate": {
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  "r11"
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 "lang": {
  "en-us": {
   "role": {
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    "label": "Document Shell Company Event Date"
   }
  }
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 "localname": "DocumentShellCompanyEventDate",
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 ],
 "xbrltype": "dateItemType"
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"dei_DocumentShellCompanyReport": {
 "auth_ref": [
  "r11"
 ],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Boolean flag that is true for a Shell Company Report pursuant to section 13 or 15(d) of the Exchange Act.",
    "label": "Document Shell Company Report"
   }
  }
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 "localname": "DocumentShellCompanyReport",
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 ],
 "xbrltype": "booleanItemType"
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 ],
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    "label": "Document Transition Report"
   }
  }
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 "xbrltype": "booleanItemType"
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 "lang": {
  "en-us": {
   "role": {
    "documentation": "The type of document being provided (such as 10-K, 10-Q, 485BPOS, etc). The document type is limited to the same value as the supporting SEC submission type, or the word 'Other'.",
    "label": "Document Type"
   }
  }
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 "localname": "DocumentType",
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 "xbrltype": "submissionTypeItemType"
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 "lang": {
  "en-us": {
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    "documentation": "Documents incorporated by reference.",
    "label": "Documents Incorporated by Reference [Text Block]"
   }
  }
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 "localname": "DocumentsIncorporatedByReferenceTextBlock",
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 "xbrltype": "textBlockItemType"
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 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Address Line 1 such as Attn, Building Name, Street Name",
    "label": "Entity Address, Address Line One"
   }
  }
 },
 "localname": "EntityAddressAddressLine1",
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 "xbrltype": "normalizedStringItemType"
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"dei_EntityAddressAddressLine2": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Address Line 2 such as Street or Suite number",
    "label": "Entity Address, Address Line Two"
   }
  }
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 "localname": "EntityAddressAddressLine2",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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 "xbrltype": "normalizedStringItemType"
},
"dei_EntityAddressAddressLine3": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Address Line 3 such as an Office Park",
    "label": "Entity Address, Address Line Three"
   }
  }
 },
 "localname": "EntityAddressAddressLine3",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
 "presentation": [
  "http://tuesdaymorning.com/role/Cover"
 ],
 "xbrltype": "normalizedStringItemType"
},
"dei_EntityAddressCityOrTown": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Name of the City or Town",
    "label": "Entity Address, City or Town"
   }
  }
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 "localname": "EntityAddressCityOrTown",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
 "presentation": [
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 "xbrltype": "normalizedStringItemType"
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"dei_EntityAddressCountry": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "ISO 3166-1 alpha-2 country code.",
    "label": "Entity Address, Country"
   }
  }
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 "localname": "EntityAddressCountry",
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 "xbrltype": "countryCodeItemType"
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"dei_EntityAddressPostalZipCode": {
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  "en-us": {
   "role": {
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    "label": "Entity Address, Postal Zip Code"
   }
  }
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 "xbrltype": "normalizedStringItemType"
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"dei_EntityAddressStateOrProvince": {
 "auth_ref": [],
 "lang": {
  "en-us": {
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    "documentation": "Name of the state or province.",
    "label": "Entity Address, State or Province"
   }
  }
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 "localname": "EntityAddressStateOrProvince",
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 "xbrltype": "stateOrProvinceItemType"
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"dei_EntityBankruptcyProceedingsReportingCurrent": {
 "auth_ref": [
  "r4"
 ],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "For registrants involved in bankruptcy proceedings during the preceding five years, the value Yes indicates that the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court; the value No indicates the registrant has not.  Registrants not involved in bankruptcy proceedings during the preceding five years should not report this element.",
    "label": "Entity Bankruptcy Proceedings, Reporting Current"
   }
  }
 },
 "localname": "EntityBankruptcyProceedingsReportingCurrent",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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 "xbrltype": "booleanItemType"
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"dei_EntityCentralIndexKey": {
 "auth_ref": [
  "r14"
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 "lang": {
  "en-us": {
   "role": {
    "documentation": "A unique 10-digit SEC-issued value to identify entities that have filed disclosures with the SEC. It is commonly abbreviated as CIK.",
    "label": "Entity Central Index Key"
   }
  }
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 "localname": "EntityCentralIndexKey",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
 "presentation": [
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 "xbrltype": "centralIndexKeyItemType"
},
"dei_EntityCommonStockSharesOutstanding": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Indicate number of shares or other units outstanding of each of registrant's classes of capital or common stock or other ownership interests, if and as stated on cover of related periodic report. Where multiple classes or units exist define each class/interest by adding class of stock items such as Common Class A [Member], Common Class B [Member] or Partnership Interest [Member] onto the Instrument [Domain] of the Entity Listings, Instrument.",
    "label": "Entity Common Stock, Shares Outstanding"
   }
  }
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 "localname": "EntityCommonStockSharesOutstanding",
 "nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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 ],
 "xbrltype": "sharesItemType"
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"dei_EntityCurrentReportingStatus": {
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"lang": {
 "en-us": {
  "role": {
   "documentation": "Indicate 'Yes' or 'No' whether registrants (1) have filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that registrants were required to file such reports), and (2) have been subject to such filing requirements for the past 90 days. This information should be based on the registrant's current or most recent filing containing the related disclosure.",
   "label": "Entity Current Reporting Status"
  }
 }
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"localname": "EntityCurrentReportingStatus",
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"presentation": [
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],
"xbrltype": "yesNoItemType"
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"dei_EntityEmergingGrowthCompany": {
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"lang": {
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  "role": {
   "documentation": "Indicate if registrant meets the emerging growth company criteria.",
   "label": "Entity Emerging Growth Company"
  }
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"localname": "EntityEmergingGrowthCompany",
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],
"xbrltype": "booleanItemType"
},
"dei_EntityExTransitionPeriod": {
"auth_ref": [
 "r20"
],
"lang": {
 "en-us": {
  "role": {
   "documentation": "Indicate if an emerging growth company has elected not to use the extended transition period for complying with any new or revised financial accounting standards.",
   "label": "Elected Not To Use the Extended Transition Period"
  }
 }
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"localname": "EntityExTransitionPeriod",
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],
"xbrltype": "booleanItemType"
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"dei_EntityFileNumber": {
"auth_ref": [],
"lang": {
 "en-us": {
  "role": {
   "documentation": "Commission file number. The field allows up to 17 characters. The prefix may contain 1-3 digits, the sequence number may contain 1-8 digits, the optional suffix may contain 1-4 characters, and the fields are separated with a hyphen.",
   "label": "Entity File Number"
  }
 }
},
"localname": "EntityFileNumber",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
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],
"xbrltype": "fileNumberItemType"
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"dei_EntityFilerCategory": {
"auth_ref": [
 "r18"
],
"lang": {
 "en-us": {
  "role": {
   "documentation": "Indicate whether the registrant is one of the following: Large Accelerated Filer, Accelerated Filer, Non-accelerated Filer. Definitions of these categories are stated in Rule 12b-2 of the Exchange Act. This information should be based on the registrant's current or most recent filing containing the related disclosure.",
   "label": "Entity Filer Category"
  }
 }
},
"localname": "EntityFilerCategory",
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"presentation": [
 "http://usmadeyousing.com/role/Cover"
],
"xbrltype": "filerCategoryItemType"
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"dei_EntityIncorporationStateCountryCode": {
"auth_ref": [],
"lang": {
 "en-us": {
  "role": {
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   "label": "Entity Incorporation, State or Country Code"
  }
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"localname": "EntityIncorporationStateCountryCode",
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],
"xbrltype": "edgarStateCountryItemType"
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"dei_EntityInteractiveDataCurrent": {
"auth_ref": [
 "r16"
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"lang": {
 "en-us": {
  "role": {
   "documentation": "Boolean flag that is true when the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).",
   "label": "Entity Interactive Data Current"
  }
 }
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"xbrltype": "yesNoItemType"
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"auth_ref": [
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"lang": {
 "en-us": {
  "role": {
   "documentation": "Primary Standard Industrial Classification (SIC) Number for the Entity.",
   "label": "Entity Primary SIC Number"
  }
 }
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],
"xbrltype": "sicNumberItemType"
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"auth_ref": [],
"lang": {
 "en-us": {
  "role": {
   "documentation": "The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter.",
   "label": "Entity Public Float"
  }
 }
},
"localname": "EntityPublicFloat",
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"xbrltype": "monetaryItemType"
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"dei_EntityRegistrantName": {
"auth_ref": [
 "r18"
],
"lang": {
 "en-us": {
  "role": {
   "documentation": "The exact name of the entity filing the report as specified in its charter, which is required by forms filed with the SEC.",
   "label": "Entity Registrant Name"
  }
 }
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"localname": "EntityRegistrantName",
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],
"xbrltype": "normalizedStringItemType"
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"dei_EntityShellCompany": {
"auth_ref": [
 "r18"
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"lang": {
 "en-us": {
  "role": {
   "documentation": "Boolean flag that is true when the registrant is a shell company as defined in Rule 12b-2 of the Exchange Act.",
   "label": "Entity Shell Company"
  }
 }
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"localname": "EntityShellCompany",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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 "http://usmadeyousing.com/role/Cover"
],
"xbrltype": "booleanItemType"
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"dei_EntitySmallBusiness": {
"auth_ref": [
 "r18"
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"lang": {
 "en-us": {
  "role": {
   "documentation": "Indicates that the company is a Smaller Reporting Company (SRC).",
   "label": "Entity Small Business"
  }
 }
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"localname": "EntitySmallBusiness",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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 "http://usmadeyousing.com/role/Cover"
],
"xbrltype": "booleanItemType"
},
"dei_EntityTaxIdentificationNumber": {
"auth_ref": [
 "r18"
],
"lang": {
 "en-us": {
  "role": {
   "documentation": "The Tax Identification Number (TIN), also known as an Employer Identification Number (EIN), is a unique 9-digit value assigned by the IRS.",
   "label": "Entity Tax Identification Number"
  }
 }
},
"localname": "EntityTaxIdentificationNumber",
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"dei_EntityVoluntaryFilers": {
"auth_ref": [],
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 "en-us": {
  "role": {
   "documentation": "Indicate 'Yes' or 'No' if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.",
   "label": "Entity Voluntary Filers"
  }
 }
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"localname": "EntityVoluntaryFilers",
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"presentation": [
 "http://usmadeyousing.com/role/Cover"
],
"xbrltype": "yesNoItemType"
},
"dei_EntityWellKnownSeasonedIssuer": {
"auth_ref": [],
"lang": {
 "en-us": {
  "role": {
   "documentation": "Indicate 'Yes' or 'No' if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. It used on Form Type: 10-K, 10-Q, 8-K, 20-F, 6-K, 10-K/A, 10-Q/A, 20-F/A, 6-K/A, N-CSR, N-Q, N-1A.",
   "label": "Entity Well-known Seasoned Issuer"
  }
 }
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"localname": "EntityWellKnownSeasonedIssuer",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
 "http://usmadeyousing.com/role/Cover"
],
"xbrltype": "yesNoItemType"
},
"dei_Extension": {
"auth_ref": [],
"lang": {
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  "role": {
   "documentation": "Extension number for local phone number.",
   "label": "Extension"
  }
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"localname": "Extension",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
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],
"xbrltype": "normalizedStringItemType"
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"dei_LocalPhoneNumber": {
"auth_ref": [],
"lang": {
 "en-us": {
  "role": {
   "documentation": "Local phone number for entity.",
   "label": "Local Phone Number"
  }
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"xbrltype": "normalizedStringItemType"
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"dei_NoTradingSymbolFlag": {
"auth_ref": [],
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   "label": "No Trading Symbol Flag"
  }
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"xbrltype": "booleanItemType"
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"dei_OtherReportingStandardItemNumber": {
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"lang": {
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   "label": "Other Reporting Standard Item Number"
  }
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"localname": "OtherReportingStandardItemNumber",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
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"http://tuesdaymorning.com/role/Cover"
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"xbrltype": "otherReportingStandardItemNumberItemType"
},
"dei_PreCommencementIssuerTenderOffer": {
"auth_ref": [
"r5"
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"lang": {
"en-us": {
"role": {
"documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act.",
"label": "Pre-commencement Issuer Tender Offer"
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}
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"localname": "PreCommencementIssuerTenderOffer",
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"xbrltype": "booleanItemType"
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"dei_PreCommencementTenderOffer": {
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"lang": {
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"role": {
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"label": "Pre-commencement Tender Offer"
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"localname": "PreCommencementTenderOffer",
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"dei_Security12bTitle": {
"auth_ref": [
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"lang": {
"en-us": {
"role": {
"documentation": "Title of a 12(b) registered security.",
"label": "Title of 12(b) Security"
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"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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"xbrltype": "securityTitleItemType"
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"dei_Security12gTitle": {
"auth_ref": [
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],
"lang": {
"en-us": {
"role": {
"documentation": "Title of a 12(g) registered security.",
"label": "Title of 12(g) Security"
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"localname": "Security12gTitle",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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],
"xbrltype": "securityTitleItemType"
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"dei_SecurityExchangeName": {
"auth_ref": [
"r2"
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"lang": {
"en-us": {
"role": {
"documentation": "Name of the Exchange on which a security is registered.",
"label": "Security Exchange Name"
}
}
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"localname": "SecurityExchangeName",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
"http://tuesdaymorning.com/role/Cover"
],
"xbrltype": "edgarExchangeCodeItemType"
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"dei_SecurityReportingObligation": {
"auth_ref": [
"r7"
],
"lang": {
"en-us": {
"role": {
"documentation": "15(d), indicating whether the security has a reporting obligation under that section of the Exchange Act.",
"label": "Security Reporting Obligation"
}
}
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"localname": "SecurityReportingObligation",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
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"xbrltype": "securityReportingObligationItemType"
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"dei_SolicitingMaterial": {
"auth_ref": [
"r8"
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"lang": {
"en-us": {
"role": {
"documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as soliciting material pursuant to Rule 14a-12 under the Exchange Act.",
"label": "Soliciting Material"
}
}
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"localname": "SolicitingMaterial",
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],
"xbrltype": "booleanItemType"
},
"dei_TradingSymbol": {
"auth_ref": [],
"lang": {
"en-us": {
"role": {
"documentation": "Trading symbol of an instrument as listed on an exchange.",
"label": "Trading Symbol"
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}
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"localname": "TradingSymbol",
"nsuri": "http://xbrl.sec.gov/dei/2020-01-31",
"presentation": [
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],
"xbrltype": "tradingSymbolItemType"
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"dei_WrittenCommunications": {
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"role": {
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"label": "Written Communications"
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}
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"localname": "WrittenCommunications",
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"presentation": [
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"xbrltype": "booleanItemType"
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"r0": {
"Name": "Exchange Act",
"Number": "240",
"Publisher": "SEC",
"Section": "12",
"Subsection": "b"
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"r1": {
"Name": "Exchange Act",
"Number": "240",
"Publisher": "SEC",
"Section": "12",
"Subsection": "b-23"
},
"r10": {
"Name": "Form 10-Q",
"Number": "240",
"Publisher": "SEC",
"Section": "308",
"Subsection": "a"
},
"r11": {
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"Number": "249",
"Publisher": "SEC",
"Section": "220",
"Subsection": "f"
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"r12": {
"Name": "Form 40-F",
"Number": "249",
"Publisher": "SEC",
"Section": "240",
"Subsection": "f"
},
"r13": {
"Name": "Forms 10-K, 10-Q, 20-F",
"Number": "240",
"Publisher": "SEC",
"Section": "13",
"Subsection": "a-1"
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"r14": {
"Name": "Regulation 12B",
"Number": "240",
"Publisher": "SEC",
"Section": "12",
"Subsection": "b-2"
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"r15": {
"Name": "Regulation S-T",
"Number": "232",
"Publisher": "SEC",
"Section": "405"
},
"r16": {
"Name": "Securities Act",
"Number": "230",
"Publisher": "SEC",
"Section": "425"
},
"r17": {
"Name": "Securities Act",
"Number": "7A",
"Publisher": "SEC",
"Section": "B",
"Subsection": "2"
},
"r18": {
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"Number": "Section",
"Publisher": "SEC",
"Section": "12"
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"r2": {
"Name": "Exchange Act",
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"Publisher": "SEC",
"Section": "12",
"Subsection": "d1-1"
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"r3": {
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"Number": "240",
"Publisher": "SEC",
"Section": "12",
"Subsection": "g"
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"r4": {
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"Number": "240",
"Publisher": "SEC",
"Section": "12, 13, 15d"
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"r5": {
"Name": "Exchange Act",
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"Publisher": "SEC",
"Section": "13e",
"Subsection": "4c"
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"r6": {
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"Publisher": "SEC",
"Section": "14d",
"Subsection": "2b"
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"r7": {
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"Section": "15",
"Subsection": "d"
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"r8": {
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"Publisher": "SEC",
"Section": "14a",
"Subsection": "12"
},
"r9": {
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"Publisher": "SEC",
"Section": "310"
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