FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2021-05-05** | Period of Report: **2021-03-31**
SEC Accession No. 0001140361-21-015966

(HTML Version on secdatabase.com)

FILER

Turning Point Brands, Inc.
CIK:**1290677**| IRS No.: **133961898** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **001-37763** | Film No.: **21894188**
SIC: **2100** Tobacco products

Mailing Address
5201 INTERCHANGE WAY
LOUISVILLE KY 40229

Business Address
5201 INTERCHANGE WAY
LOUISVILLE KY 40229
(502) 778-4421

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q

(Mark One)

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2021

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number: 001-37763

TURNING POINT BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-0709285**
(State or other jurisdiction of Incorporation or organization)	(I.R.S. Employer Identification No.)
5201 Interchange Way, Louisville, KY	**40229**
(Address of principal executive offices)	(Zip Code)

(502) 778-4421
(Registrant's telephone number, including area code)

Former name, former address and former fiscal year, if changed since last report: not applicable

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.01 par value	TPB	New York Stock Exchange

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

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

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

Large accelerated filer	☐	Accelerated filer	☑
Non-accelerated filer	☐	Smaller reporting company	☐

Emerging growth company ☑

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

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

At April 28, 2021, there were 19,059,449 shares outstanding of the registrant's voting common stock, par value $0.01 per share.

TURNING POINT BRANDS, INC.
TABLE OF CONTENTS

Table of Contents

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. Forward-looking statements may generally be identified by the use of words such as "anticipate," "believe," "expect," "intend," "plan," and "will" or, in each case, their negative, or other variations or comparable terminology. These forward-looking statements include all matters that are not historical facts. By their nature, forward-looking statements involve risks and uncertainties because they relate to events, and depend on circumstances, that may or may not occur in the future. As a result, actual events may differ materially from those expressed in, or suggested by, the forward-looking statements. Any forward-looking statement made by Turning Point Brands, Inc. ("TPB"), in this Quarterly Report on Form 10-Q speaks only as of the date hereof. New risks and uncertainties come up from time to time, and it is impossible for TPB to predict these events or how they may affect it. TPB has no obligation, and does not intend, to update any forward-looking statements after the date hereof, except as required by federal securities laws. Factors that could cause these differences include, but are not limited to:

- declining sales of tobacco products, and expected continuing decline of sales, in the tobacco industry overall;
- our dependence on a small number of third-party suppliers and producers;
- the possibility that we will be unable to identify or contract with new suppliers or producers in the event of a supply or product disruption;
- the possibility that our licenses to use certain brands or trademarks will be terminated, challenged or restricted;
- failure to maintain consumer brand recognition and loyalty of our customers;
- our reliance on relationships with several large retailers and national chains for distribution of our products;
- intense competition and our ability to compete effectively;
- competition from illicit sources and the damage caused illicit products to brand equity;
- contamination of our tobacco supply or products;
- substantial and increasing U.S. regulation;
- regulation of our products by the FDA, which has broad regulatory powers;
- many of our products contain nicotine, which is considered to be a highly addictive substance;
- requirement to maintain compliance with master settlement agreement;
- possible significant increases in federal, state and local municipal tobacco- and vapor-related taxes;
- uncertainty and continued evolution of regulation of our NewGen and cigar products;
- our products are subject to developing and unpredictable regulation, such as court actions that impact obligations;
- increase in state and local regulation of our NewGen products has been proposed or enacted;
- increase in tax of our NewGen products could adversely affect our business;
- sensitivity of end-customers to increased sales taxes and economic conditions;
- possible increasing international control and regulation;
- failure to comply with environmental, health and safety regulations;
- imposition of significant tariffs on imports into the U.S.;
- the scientific community's lack of information regarding the long-term health effects of certain substances contained in some of our products;
- infringement on or misappropriation of our intellectual property;
- third-party claims that we infringe on their intellectual property;
- significant product liability litigation;
- the effect of the COVID-19 pandemic on our business;
- our amount of indebtedness;
- the terms of our indebtedness, which may restrict our current and future operations;
- our loss of emerging growth status on December 31, 2021 and ability to comply with the additional disclosure requirements applicable to non-emerging growth companies;
- reduced disclosure requirements applicable to emerging growth companies may make our common stock less attractive to investors, potentially decreasing our stock price;
- our certificate of incorporation and bylaws, as well as Delaware law and certain regulations, could discourage or prohibit acquisition bids or merger proposals, which may adversely affect the market price of our common stock;
- our certificate of incorporation limits the ownership of our common stock by individuals and entities that are Restricted Investors. These restrictions may affect the liquidity of our common stock and may result in Restricted Investors being required to sell or redeem their shares at a loss or relinquish their voting, dividend and distribution rights;
- future sales of our common stock in the public market could reduce our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute your ownership in us;

- we may issue preferred stock whose terms could adversely affect the voting power or value of our common stock;
- our business may be damaged by events outside of our suppliers' control, such as the impact of epidemics (e.g., coronavirus), political upheavals, or natural disasters;
- our reliance on information technology;
- cybersecurity and privacy breaches;
- failure to manage our growth;
- failure to successfully integrate our acquisitions or otherwise be unable to benefit from pursuing acquisitions;
- fluctuations in our results;
- exchange rate fluctuations;
- adverse U.S. and global economic conditions;
- departure of key management personnel or our inability to attract and retain talent; and
- failure to meet expectations relating to environmental, social and governance factors.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Turning Point Brands, Inc.
Consolidated Balance Sheets
(dollars in thousands except share data)
(unaudited)

ASSETS	March 31, 2021	December 31, 2020
Current assets:		
Cash	$ 167,361	$ 41,765
Accounts receivable, net of allowances of $148 in 2021 and $150 in 2020	6,606	9,331
Inventories	98,351	85,856
Other current assets	24,866	26,451
Total current assets	297,184	163,403
Property, plant, and equipment, net	15,648	15,524
Deferred income taxes	-	610
Right of use assets	17,406	17,918
Deferred financing costs, net	464	641
Goodwill	159,808	159,621
Other intangible assets, net	78,945	79,422
Master Settlement Agreement (MSA) escrow deposits	31,477	32,074
Other assets	26,373	26,836
Total assets	$ 627,305	$ 496,049
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 24,166	$ 9,201
Accrued liabilities	31,845	35,225
Current portion of long-term debt	5,000	12,000
Other current liabilities	205	203
Total current liabilities	61,216	56,629
Notes payable and long-term debt	424,802	302,112
Deferred income taxes	735	-
Lease liabilities	15,570	16,117
Other long-term liabilities	-	3,704
Total liabilities	502,323	378,562
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; $0.01 par value; authorized shares 40,000,000; issued and outstanding shares -0-	-	-
Common stock, voting, $0.01 par value; authorized shares, 190,000,000; 19,576,821 issued shares and 19,059,120 outstanding shares at March 31, 2021, and 19,532,464 issued shares and 19,133,794 outstanding shares at December 31, 2020	196	195
Common stock, nonvoting, $0.01 par value; authorized shares, 10,000,000; issued and outstanding shares -0-	-	-
Additional paid-in capital	102,879	102,423
Cost of repurchased common stock (517,701 shares at March 31, 2021 and 398,670 shares at December 31, 2020)	(15,924)	(10,191)
Accumulated other comprehensive loss	(480)	(2,635)
Accumulated earnings	34,357	23,645

Non-controlling interest	3,954	4,050
Total stockholders' equity	124,982	117,487
Total liabilities and stockholders' equity	$ 627,305	$ 496,049

The accompanying notes are an integral part of the consolidated financial statements.

Turning Point Brands, Inc.
Consolidated Statements of Income
(dollars in thousands except share data)
(unaudited)

	Three Months Ended March 31,	
	2021	**2020**
Net sales	$ 107,641	$ 90,689
Cost of sales	54,380	49,258
Gross profit	53,261	41,431
Selling, general, and administrative expenses	28,912	32,394
Operating income	24,349	9,037
Interest expense, net	4,486	3,309
Investment income	(25)	(91)
Loss on extinguishment of debt	5,706	-
Net periodic income, excluding service cost	-	(87)
Income before income taxes	14,182	5,906
Income tax expense	2,654	1,407
Consolidated net income	11,528	4,499
Net loss attributable to non-controlling interest	(255)	-
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499
Basic income per common share:		
Net income attributable to Turning Point Brands, Inc.	$ 0.62	$ 0.23
Diluted income per common share:		
Net income attributable to Turning Point Brands, Inc.	$ 0.57	$ 0.22
Weighted average common shares outstanding:		
Basic	19,093,961	19,689,446
Diluted	22,665,067	20,106,800

The accompanying notes are an integral part of the consolidated financial statements.

Turning Point Brands, Inc.
Consolidated Statements of Comprehensive Income
(dollars in thousands)
(unaudited)

	Three Months Ended March 31,	
	2021	**2020**
Consolidated net income	$ 11,528	$ 4,499
Other comprehensive income, net of tax		
Amortization of unrealized pension and postretirement gain (loss), net of tax of $0 in 2021 and $2 in 2020	-	9
Unrealized loss on MSA investments, net of tax of $144 in 2021 and $0 in 2020	(452)	-
Foreign currency translation, net of tax of $0 in 2021 and 2020	318	-
Unrealized gain (loss) on derivative instruments, net of tax of $937 in 2021 and $624 in 2020	2,448	(1,615)
	2,314	(1,606)
Consolidated comprehensive income	13,842	2,893
Comprehensive (loss) income attributable to non-controlling interest	(96)	-
Comprehensive income attributable to Turning Point Brands, Inc.	$ 13,938	$ 2,893

The accompanying notes are an integral part of the consolidated financial statements

Turning Point Brands, Inc.
Consolidated Statements of Cash Flows
(dollars in thousands)
(unaudited)

	Three Months Ended March 31,	
	2021	**2020**
Cash flows from operating activities:		
Consolidated net income	$ 11,528	$ 4,499
Adjustments to reconcile net income to net cash provided by operating activities:		
Loss on extinguishment of debt	5,706	-
Gain on sale of property, plant, and equipment	(2)	-
Depreciation expense	788	851
Amortization of other intangible assets	477	425
Amortization of deferred financing costs	604	552
Deferred income taxes	552	1,006
Stock compensation expense	1,498	455
Noncash lease expense	6	13
Gain on investments	(13)	-
Changes in operating assets and liabilities:		
Accounts receivable	2,735	2,596
Inventories	(12,461)	1,784
Other current assets	1,283	(2,420)
Other assets	464	(130)
Accounts payable	14,882	3,210
Accrued postretirement liabilities	-	(27)
Accrued liabilities and other	(3,806)	1,913
Net cash provided by operating activities	$ 24,241	$ 14,727
Cash flows from investing activities:		
Capital expenditures	$ (842)	$ (877)
Restricted cash, MSA escrow deposits	(14,920)	-
Proceeds on the sale of property, plant and equipment	2	-
Net cash used in investing activities	$ (15,760)	$ (877)
Cash flows from financing activities:		
Proceeds from Senior Secured Notes	$ 250,000	$ -
Payments of 2018 first lien term loan	(130,000)	(2,000)
Settlement of interest rate swaps	(3,573)	-
Payment of IVG note	-	(4,240)
Payment of dividends	(958)	(886)
Payments of financing costs	(6,614)	(168)
Exercise of options	425	227
Redemption of options	(1,466)	-
Common stock repurchased	(5,733)	(2,627)
Net cash provided by (used in) financing activities	$ 102,081	$ (9,694)
Net increase in cash	$ 110,562	$ 4,156
Effect of foreign currency translation on cash	$ 101	$ -
Cash, beginning of period:		
Unrestricted	41,765	95,250
Restricted	35,074	32,074

Total cash at beginning of period	76,839	127,324
Cash, end of period:		
Unrestricted	167,361	99,406
Restricted	20,141	32,074
Total cash at end of period	$ 187,502	$ 131,480
Supplemental schedule of noncash financing activities:		
Dividends declared not paid	$ 1,071	$ 998
Accrued expenses for incurred financing costs	$ 301	$ 13

The accompanying notes are an integral part of the consolidated financial statements

Turning Point Brands, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Deficit)
(dollars in thousands except share data)
(unaudited)

	Voting Shares	Common Stock, Voting	Additional Paid-In Capital	Cost of Repurchased Common Stock	Accumulated Other Comprehensive Loss	Accumulated Earnings (Deficit)	Non-Controlling Interest	Total
Beginning balance January 1, 2021	19,133,794	$ 195	$ 102,423	$ (10,191)	$ (2,635)	$ 23,645	$ 4,050	$117,487
Unrealized loss on MSA investments, net of tax of $144	-	-	-	-	(452)	-	-	(452)
Unrealized gain on derivative instruments, net of tax of $937	-	-	-	-	2,448	-	-	2,448
Foreign currency translation, net of tax of $0	-	-	-	-	159	-	159	318
Stock compensation expense	-	-	1,498	-	-	-	-	1,498
Exercise of options	44,357	1	424	-	-	-	-	425
Redemption of options	-	-	(1,466)	-	-	-	-	(1,466)
Cost of repurchased common stock	(119,031)	-	-	(5,733)	-	-	-	(5,733)
Dividends	-	-	-	-	-	(1,071)	-	(1,071)
Net income	-	-	-	-	-	11,783	(255)	11,528
Ending balance March 31, 2021	19,059,120	$ 196	$ 102,879	$ (15,924)	$ (480)	$ 34,357	$ 3,954	$124,982
Beginning balance January 1, 2020	19,680,673	$ 197	$ 125,469	$ -	$ (3,773)	$ (15,308)	$ -	$106,585
Unrecognized pension and	-	-	-	-	9	-		9

postretirement cost adjustment, net of tax of $2							
Unrealized loss on derivative instruments, net of tax of $624	-	-	-	-	(1,615)	-	(1,615)
Stock compensation expense	-	-	455	-	-	-	455
Exercise of options	42,407	-	227	-	-	-	227
Cost of repurchased common stock	(134,130)	-	-	(2,627)	-	-	(2,627)
Dividends	-	-	-	-	-	(998)	(998)
Net income	-	-	-	-	-	4,499	4,499
Cumulative effect of change in accounting principle	-	-	(24,939)	-	-	6,436	(18,503)
Ending balance March 31, 2020	19,588,950	$ 197	$ 101,212	$ (2,627)	$ (5,379)	$ (5,371)	$ -	$ 88,032

The accompanying notes are an integral part of the consolidated financial statements

Turning Point Brands, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except where designated and per share data)

Note 1. Description of Business and Basis of Presentation

Description of Business

Turning Point Brands, Inc. and its subsidiaries (collectively referred to herein as the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products with active ingredients. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® to our next generation products to fulfill evolving consumer preferences. We operate in three segments: (i) Zig-Zag Products, (ii) Stoker's Products, and (iii) NewGen Products. Our three focus segments are led by our core, proprietary brands – *Zig-Zag*® in the Zig-Zag Products segment; *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment; and *Nu-X*™, *Solace*® along with our distribution platforms (*Vapor Beast*®, *VaporFi*® and *Direct Vapor*®) in the NewGen Products segment. The Company's products are available in more than 210,000 retail outlets in North America.

Basis of Presentation

The accompanying unaudited interim, consolidated financial statements have been prepared in accordance with the accounting practices described in the Company's audited, consolidated financial statements as of and for the year ended December 31, 2020. In the opinion of management, the unaudited, interim, consolidated financial statements included herein contain all adjustments necessary to present fairly the financial position, results of operations, and cash flows of the Company for the periods indicated. Such adjustments, other than nonrecurring adjustments separately disclosed, are of a normal and recurring nature. The operating results for interim periods are not necessarily indicative of results to be expected for a full year or future interim periods. The unaudited, interim, consolidated financial statements should be read in conjunction with the Company's audited, consolidated financial statements and accompanying notes as of and for the year ended December 31, 2020. The accompanying interim, consolidated financial statements are presented in accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC")and, accordingly, do not include all the disclosures required by generally accepted accounting principles in the United States ("GAAP") with respect to annual financial statements.

Note 2. Summary of Significant Accounting Policies

Consolidation

The consolidated financial statements include the accounts of the Company, its subsidiaries, all of which are wholly-owned, and variable interest entities ("VIEs") for which the Company is considered the primary beneficiary. All significant intercompany transactions have been eliminated.

Revenue Recognition

The Company recognizes revenues in accordance with Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers (Topic 606), which includes excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and incentives, upon delivery of goods to the customer – at which time the Company's performance obligation is satisfied – at an amount that the Company expects to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. The Company excludes from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars or vaping products billed to customers).

The Company records an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. The Company records sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers,

retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.

A further requirement of ASU 2014-09 is for entities to disaggregate revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The Company's management views business performance through segments that closely resemble the performance of major product lines. Thus, the primary and most useful disaggregation of the Company's contract revenue for decision making purposes is the disaggregation by segment which can be found in Note 18 of Notes to Consolidated Financial Statements. An additional disaggregation of contract revenue by sales channel can be found within Note 18 as well.

Shipping Costs

The Company records shipping costs incurred as a component of selling, general, and administrative expenses. Shipping costs incurred were approximately $5.9 million and $5.3 million for the three months ending March 31, 2021 and 2020, respectively.

Inventories

Inventories are stated at the lower of cost or net realizable value. Effective January 1, 2021, the Company changed its method of accounting for inventory using the last-in, first-out ("LIFO") method to the first-in, first-out ("FIFO") method. The Company applied this change retrospectively to all prior periods presented, which is discussed further in Note 6. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing.

Fair Value

GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3).

The three levels of the fair value hierarchy under GAAP are described below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date.
- Level 2 – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Derivative Instruments

Foreign Currency Forward Contracts: The Company enters into foreign currency forward contracts to hedge a portion of its exposure to changes in foreign currency exchange rates on inventory purchase commitments. The Company accounts for its forward contracts under the provisions of ASC 815, Derivatives and Hedging. Under the Company's policy, the Company may hedge up to 100% of its anticipated purchases of inventory in the denominated invoice currency over a forward period not to exceed twelve months. The Company may also, from time to time, hedge up to ninety percent of its non-inventory purchases in the denominated invoice currency. Forward contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these forward contracts are transferred from other comprehensive income into inventory as the related inventories are received and are transferred to net income as inventory is sold. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Interest Rate Swap Agreements: The Company enters into interest rate swap contracts to manage interest rate risk and reduce the volatility of future cash flows. The Company accounts for its interest rate swap contracts under the provisions of ASC 815, Derivatives and Hedging. Swap contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these swap contracts are transferred from other comprehensive income into net income upon settlement of the derivative position or

at maturity of the interest rate swap contract. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Risks and Uncertainties

Manufacturers and sellers of tobacco products are subject to regulation at the federal, state, and local levels. Such regulations include, among others, labeling requirements, limitations on advertising, and prohibition of sales to minors. The tobacco industry is likely to continue to be heavily regulated. There can be no assurance as to the ultimate content, timing, or effect of any regulation of tobacco products by any federal, state, or local legislative or regulatory body, nor can there be any assurance that any such legislation or regulation would not have a material adverse effect on the Company's financial position, results of operations, or cash flows. In a number of states targeted flavor bans have been proposed or enacted legislatively or by the administrative process. Depending on the number and location of such bans, that legislation or regulation could have a material adverse effect on the Company's financial position, results of operations or cash flows. Food and Drug Administration ("FDA") continues to consider various restrictive regulations around our products, including targeted flavor bans; however, the details, timing, and ultimate implementation of such measures remain unclear.

The tobacco industry has experienced, and is experiencing, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes for injuries allegedly caused by smoking or exposure to smoke. However, several lawsuits have been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. Typically, such claims assert that use of smokeless products is addictive and causes oral cancer. Additionally, several lawsuits have been brought against manufacturers and distributors of NewGen products due to malfunctioning devices. There can be no assurance the Company will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Master Settlement Agreement (MSA): Pursuant to the Master Settlement Agreement (the "MSA") entered into in November 1998 by most states (represented by their attorneys general acting through the National Association of Attorneys General) and subsequent states' statutes, a "cigarette manufacturer" (which is defined to include a manufacturer of make-your-own ("MYO") cigarette tobacco) has the option of either becoming a signatory to the MSA or opening, funding, and maintaining an escrow account to have funds available for certain potential tobacco-related liabilities with sub-accounts on behalf of each settling state. Such companies are entitled to direct the investment of the escrowed funds and withdraw any appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state's escrow statute to pay a final judgement to that state's plaintiffs in the event of such a final judgement against the Company. The Company chose to open and fund an escrow account as its method of compliance. It is the Company's policy to record amounts on deposit in the escrow account for prior years as a non-current asset. Each year's annual obligation is required to be deposited in the escrow account by April 15 of the following year. In addition to the annual deposit, many states have elected to require quarterly deposits for the previous quarter's sales. As of March 31, 2021, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $31.5 million. At December 31, 2020, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $32.1 million. Effective in the third quarter of 2017, the Company no longer sells any product covered under the MSA. Thus, absent a change in legislation, the Company will no longer be required to make deposits to the MSA escrow account.

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury Notes, and Treasury Bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; any investment in an unrealized loss position will be held until the value is recovered, or until maturity. The following shows the fair value of the MSA escrow account as of March 31, 2021 and December 31, 2020.

Fair values for the U.S. Governmental agency obligations are Level 2. The following tables show cost and estimated fair value of the assets held in the MSA account as well as the maturities of the U.S. Governmental agency obligations held in such account for the periods indicated.

	As of March 31, 2021				As of December 31, 2020
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cost and Estimated Fair Value
Cash and cash equivalents	$17,141	$ -	$ -	$ 17,141	$ 32,074
U.S. Governmental agency obligations (unrealized loss position < 12 months)	14,933	-	(597)	14,336	-
	$32,074	$ -	$ (597)	$ 31,477	$ 32,074

	As of March 31, 2021
Less than one year	$ -
One to five years	-
Five to ten years	12,984
Greater than ten years	1,949
Total	$ 14,933

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of March 31, 2021	Deposits as of December 31, 2020
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	$ 32,074	$ 32,074

Food and Drug Administration: On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (the "FSPTCA") authorized the FDA to immediately regulate the manufacturing, sale, and marketing of four categories of tobacco products – cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. On August 8, 2016, the FDA deeming regulation became effective. The deeming regulation gave the FDA the authority to additionally regulate cigars, pipe tobacco, e-cigarettes, vaporizers, and e-liquids as "deemed" tobacco products under the FSPTCA.

The FDA assesses tobacco product user fees on six classes of regulated tobacco products and computes user fees using a methodology similar to the methodology used by the U.S Department of Agriculture to compute the Tobacco Transition Payment Program ("TTPP," also known as the "Tobacco Buyout") assessment. First, the total, annual, congressionally established user fee assessment is allocated among the various classes of tobacco products using the federal excise tax weighted market share of tobacco products subject to regulation. Then, the assessment for each class of tobacco products is divided among individual manufacturers and importers.

In August 2016, the FDA's regulatory authority under the Tobacco Control Act (the "TCA") was extended to all tobacco products not previously covered, including: (i) certain NewGen products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco); (iii) pipe tobacco; (iv) hookah products; and (v) any other tobacco product "newly deemed" by the FDA. These "deeming regulations" apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Accordingly, the FDA has since regulated our cigar and cigar wrap products as well as our vapor products containing tobacco-derived nicotine and products intended or reasonably expected to be used to consume such e-liquids.

Under the deeming regulations, the FDA has responsibility for conducting premarket review of "new tobacco products"—defined as those products not commercially marketed in the United States as of February 15, 2007. There are three pathways for obtaining premarket authorization, including submission of a premarket tobacco product application ("PMTA").

We submitted premarket filings prior to the September 9, 2020 deadline for certain of our products and intend to supplement and complete the applications within FDA's discretionary timeline. A successful PMTA must demonstrate that the subject product is "appropriate for the protection of public health," taking into account the effect of the marketing of the product on all sub-populations while a Substantial Equivalence Report must demonstrate that a new product either has the same characteristics as its predicate product or different characteristics, but does not raise different questions of public health. The FDA is required under a court order to issue a decision related to the authorization of these products within twelve months; otherwise, these products cease to be subject to the FDA's continued compliance policy, which allows products to be marketed pending premarket review. FDA may, in its discretion and on a case-by-case basis, deviate from this policy.

FDA has issued a number of proposed rules related to premarket filings; however, those rules were not finalized until after September 9, 2020. As such, it is unclear whether and how FDA will apply any new or additional requirements to currently pending applications. We believe we have products that meet the requisite standards and have filed premarket filings supporting a showing of the respective required standard. However, there is no assurance that the FDA's guidance or ultimate regulation will not change, or that the FDA will review and authorize the products in the requisite time period or that, in that circumstance, the FDA will use its discretion on a case-by-case basis to allow for the continued marketing of the products, or that unforeseen circumstances will not arise that prevent us from sufficiently supplementing or completing our applications or otherwise increase the amount of time and money we are required to spend to receive all necessary marketing orders. Although we filed many premarket applications in a timely manner, no assurance can be given that the applications will ultimately be successful. This may result in the prioritization of supplementing or completing applications for high priority SKUs in our inventory position, which could adversely impact future revenues.

In addition, we currently distribute many third-party manufactured vapor products for which we will be completely dependent on the manufacturer complying with the premarket filing requirements. There can be no assurance that these third-party products will receive a marketing order. While we will take measures to pursue regulatory compliance for our own privately-branded or proprietary vape products that compete with these third-party products, there is no assurance that such proprietary products would be as successful in the marketplace or can fully displace third-party products that are currently being distributed by us, which could adversely affect our results of operations and liquidity. For a period of time after the filing deadline, we expect there to be a lack of enforcement, which may adversely affect our ability to compete in the marketplace against those who continue to sell unauthorized products.

In January 2020, FDA issued a Guidance document (the "January 2020 Guidance") that stated it would be prioritizing enforcement of several categories of electronic nicotine delivery system ("ENDS") products: (1) flavored, cartridge-based ENDS products (other than tobacco- or menthol-flavored ENDS products; (2) ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; (3) ENDS products targeted to minors or whose marketing is likely to promote the use of ENDS by minors; and (4) ENDS products offered for sale after May 12, 2020, premarket application deadline (later updated to reflect the September 9, 2020 filing deadline) for which the manufacturer has not submitted a premarket application. The policy outlined several factors the agency would consider in its enforcement of flavored cigars going forward but did not restrict those products as it had considered in the March 2019 Guidance proposal. The FDA's policy on these and other regulated products may change or expand over time in ways not yet known and may significantly impact our products or our premarket filings.

Recent Accounting Pronouncements Adopted

In December 2019, the FASB issued ASU 2019-12 to simplify the accounting in ASC 740, *Income Taxes*. This guidance removes certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. This guidance also clarifies and simplifies other areas of ASC 740. This ASU will be effective beginning in the first quarter of the Company's fiscal year 2021. Certain amendments in this update must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The ASU was effective for the Company beginning in the first quarter of 2021. The ASU did not have an impact to the Company's financial statements and related disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)*. This guidance simplifies the accounting for convertible debt instruments by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the convertible instrument. This guidance also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company early adopted this ASU effective January 1, 2021 using the full retrospective method of transition. The adoption resulted in a $7.1 million increase in Accumulated earnings, a $24.2 million increase in Notes payable and long-term debt, a $6.3 million decrease in deferred income taxes and a $24.9 million decrease in Additional paid-in capital as of December 31, 2020, and a $2.2 million decrease in Accumulated deficit and a $24.9 million decrease in Additional paid-in capital as of December 31, 2019. Interest expense will decrease by $6.7 million annually and weighted average diluted common shares outstanding will increase by approximately 3.2 million shares.

Note 3. Acquisitions

ReCreation Marketing

In July 2019, the Company obtained a 30% stake in a Canadian distribution entity, ReCreation for $1 million paid at closing. In November 2020, the Company invested an additional $1 million related to our 30% stake. In November 2020, The Company also invested an additional $2 million increasing its ownership interest to 50%. The Company received board seats aligned with its ownership position. The Company also provided a $2.0 million unsecured loan to ReCreation bearing interest at 8% per annum and maturing November 19, 2022. The Company has determined that ReCreation is a VIE due to its required subordinated financial support. The Company has determined it is the primary beneficiary due to its 50% equity interest, additional subordinated financing and distribution agreement with ReCreation for the sale of the Company's products. As a result, the Company began consolidating ReCreation effective November 2020. As of March 31, 2021, the Company had not completed the accounting for the acquisition. The following table summarizes the consideration transferred and calculation of goodwill based on excess of the acquisition price over the estimated fair value of the identifiable net assets acquired and are based on management's preliminary estimates:

Total consideration transferred	$ 4,000
Adjustments to consideration transferred:	
Cash acquired	(3,711)
Working capital	418
Debt eliminated in consolidation	2,000
Adjusted consideration transferred	2,707
Assets acquired:	
Working capital (primarily AR and inventory)	1,551
Fixed assets and Other long term assets	70
Other liabilities	(203)
Non-controlling interest	(4,050)
Net assets acquired	$(2,632)
Goodwill	$ 5,339

The goodwill of $5.3 million consists of the synergies expected from combining the operations and is currently not deductible for tax purposes.

Standard Diversified Inc. ("SDI") Reorganization

On July 16, 2020, the Company completed its merger with SDI, whereby SDI was merged into a wholly-owned subsidiary of the Company in a tax-free downstream merger. Under the terms of the agreement, the holders of SDI's Class A Common Stock and SDI's Class B Common Stock (collectively, "SDI Common Stock") received in the aggregate, in return for their SDI Common Stock, TPB Voting Common Stock ("TPB Common Stock") at a ratio of 0.52095 shares of TPB Common Stock for each share of SDI Common Stock at the time of the merger. SDI divested its assets, other than SDI's TPB Common Stock, prior to close such that the net liabilities at closing were minimal and the only assets that SDI retained were the remaining TPB Common Stock holdings. The transaction was accounted for as an asset purchase for $236.0 million in consideration, comprised of 7,934,704 shares of TPB Common Stock valued at $234.3 million plus transaction costs and assumed net liabilities. $236.0 million was assigned to the 8,178,918 shares of TPB Common Stock acquired. The 244,214 shares of TPB Common Stock acquired in excess of the shares issued were retired resulting in a charge of $1.7 million recorded in Accumulated earnings (deficit). The Company no longer has a controlling shareholder.

Durfort Holdings

In June 2020, the Company purchased certain tobacco assets and distribution rights from Durfort Holdings S.R.L. ("Durfort") and Blunt Wrap USA for $47.7 million in total consideration, comprised of $37.7 million in cash, including $1.7 million of capitalized transaction costs, and a $10.0 million unsecured subordinated promissory note ("Promissory Note"). With this transaction, the Company acquired co-ownership in the intellectual property rights of all of Durfort's and Blunt Wrap USA's Homogenized Tobacco Leaf ("HTL") cigar wraps and cones. The Company also entered into an exclusive Master Distribution Agreement to market and sell the original *Blunt Wrap*® cigar wraps within the USA which was effective October 9, 2020. Durfort is an industry leader in alternative cigar and cigar wrap manufacturing and distribution. Blunt Wrap USA has been an innovator of new products in the smoking alternative market since 1997 and has secured patents in the USA and internationally for novel smoking wrappers and cones. The transaction was accounted for as an asset purchase with $42.2 million assigned to intellectual property, which has an indefinite life, and $5.5 million assigned to the Master Distribution Agreement, which has a 15 year life. Both assets are currently deductible for tax purposes.

Note 4. Derivative Instruments

Foreign Currency

The Company's policy is to manage the risks associated with foreign exchange rate movements. The policy allows hedging up to 100% of its anticipated purchases of inventory over a forward period that will not exceed 12 rolling and consecutive months. The Company may, from time to time, hedge currency for non-inventory purchases, *e.g.*, production equipment, not to exceed 90% of the purchase price. During 2020, the Company executed various forward contracts, which met hedge accounting requirements, for the purchase of €19.7 million and sale of €21.4 million with maturity dates ranging from December 2020 to November 2021. At March 31, 2021, the Company had forward contracts for the purchase of €13.1 million and sale of €14.3 million. The foreign currency contracts' fair value at March 31, 2021, resulted in an asset of $0.1 million included in Other current assets and a liability of $0.0 million included in Accrued liabilities. At December 31, 2020, the Company had forward contracts for the purchase of €18.0 million and sale of €19.6 million. The foreign currency contracts' fair value at December 31, 2020, resulted in an asset of $0.4 million included in Other current assets and a liability of $0.0 million included in Accrued liabilities.

Interest Rate Swaps

The Company's policy is to manage interest rate risk by reducing the volatility of future cash flows associated with debt instruments bearing interest at variable rates. In March 2018, the Company executed various interest rate swap agreements for a notional amount of $70 million with an expiration of December 2022. The swap agreements fixed LIBOR at 2.755%. The swap agreements met the hedge accounting requirements; thus, any change in fair value was recorded to other comprehensive income. The Company used the Shortcut Method to account for the swap agreements. The Shortcut Method assumes the hedge to be perfectly effective; thus, there is no ineffectiveness to be recorded in earnings. The swap agreements' fair values at December 31, 2020, resulted in a liability of $3.7 million included in other long-term liabilities. Losses of $0.2 million were reclassified into interest expense for the three months ended March 31, 2020. The Company terminated the interest rate swap agreement in conjunction with the prepayment of all outstanding amounts related to the 2018 First Lien Credit Facility (as defined) in the first quarter 2021 with the settlement payment made by the Company in the amount of $3.6 million, which was reclassified out of accumulated other comprehensive loss into loss on extinguishment of debt.

Note 5. Fair Value of Financial Instruments

The estimated fair value amounts have been determined by the Company using the methods and assumptions described below. However, considerable judgment is required to interpret market data to develop estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Cash and Cash Equivalents

Cash and cash equivalents are, by definition, short-term. Thus, the carrying amount is a reasonable estimate of fair value.

Accounts Receivable

The fair value of accounts receivable approximates their carrying value due to their short-term nature.

Long-Term Debt

The Company's Senior Secured Notes (as defined) bear interest at a rate of 5.625% per year and the fair value of the Senior Secured Notes approximate their carrying value of $250 million due to the recency of the notes' issuance, related to the quarter ended March 31, 2021.

The Company's 2018 First Lien Credit Facility bore interest at variable rates that fluctuated with market rates, the carrying values of the 2018 First Lien Credit Facility approximated its fair value. As of December 31, 2020, the fair value of the 2018 First Lien Term Loan approximated $130.0 million. The Company prepaid all outstanding amounts related to the 2019 First Lien Credit Facility in the first quarter 2021.

The Convertible Senior Notes (as defined) bear interest at a rate of 2.50% per year and the fair value of the Convertible Senior Notes without the conversion feature approximated $156.4 million, with a carrying value of $172.5 million as of March 31, 2021. As of December 31, 2020, the fair value of the Convertible Senior Notes approximated $155.3 million, with a carrying value of $172.5 million.

Note Payable – Promissory Note

The fair value of the Promissory Note approximates its carrying value of $10.0 million due to the recency of the note's issuance, related to the quarter ended March 31, 2021.

Note Payable – Unsecured Loan

The fair value of the Unsecured Note approximates its carrying value of $7.5 million due to the recency of the note's issuance, related to the quarter ended March 31, 2021.

See Note 11, "Notes Payable and Long-Term Debt", for further information regarding the Company's long-term debt.

Foreign Exchange

At March 31, 2021, the Company had forward contracts for the purchase of €13.1 million and sale of €14.3 million. The fair value of the foreign exchange contracts are based upon quoted market prices for similar instruments, thus leading to them being categorized as level 2 instruments within the fair value hierarchy, and resulted in an asset of $0.1 million and a liability of $0.0 million as of March 31, 2021. At December 31, 2020, the Company had forward contracts for the purchase of €18.0 million and sale of €19.6 million resulting in an asset of $0.4 million and a liability of $0.0 million as of December 31, 2020.

Interest Rate Swaps

The Company had swap contracts for a total notional amount of $70 million at December 31, 2020. The fair values of the swap contracts were based upon quoted market prices for similar instruments, thus leading to them being categorized as level 2 instruments within the fair value hierarchy, and resulted in a liability of $3.7 million December 31, 2020. The Company terminated the swap contracts in conjunction with the prepayment of all outstanding amounts under the 2018 First Lien Credit Facility in the first quarter 2021.

Note 6. Inventories

Effective January 1, 2021, the Company changed its method of accounting for inventory from the LIFO method to the FIFO method. Costs determined using the LIFO method were utilized on approximately 45.1% of inventories at December 31, 2020, prior to this change in method, and consisted primarily of tobacco inventory. The Company believes the FIFO method is preferable because it: (i) conforms the accounting for all inventory with the method utilized for the majority of its inventory; (ii) better represents how management assesses and reports on the performance of the tobacco and other LIFO product lines as LIFO is excluded from management's economic decision making; (iii) better aligns the accounting with the physical flow of that inventory; and (iv) better reflects inventory at more current costs.

The Company applied this change retrospectively to all prior periods presented. This change resulted in a $4.5 million increase in Accumulated earnings as of December 31, 2020, from $12.1 million to $16.6 million and a $4.3 million decrease in Accumulated deficit as of December 31, 2019, from $15.3 million to $11.0 million. In addition, the following financial statement line items in the Company's Consolidated Balance Sheets as of December 31, 2020 and its Consolidated Statements of Income and Consolidated Statements of Cash Flows for the three months ended March 31, 2020 were adjusted as follows:

Consolidated Statement of Income	**For the three months ended March 31, 2020**		
	As Originally Reported	**Effect of Change (a)**	**As Adjusted**
Cost of sales	$ 49,258	$ -	$ 49,258
Income before income taxes	$ 4,221	$ -	$ 4,221
Income tax expense	$ 946	$ -	$ 946
Net income attributable to Turning Point Brands, Inc.	$ 3,275	$ -	$ 3,275
Earnings per common share:			
Basic	$ 0.17	$ -	$ 0.17
Diluted	$ 0.16	$ -	$ 0.16

Consolidated Balance Sheets	**December 31, 2020**		
	As Originally Reported	**Effect of Change**	**As Adjusted**
Inventories	$ 79,750	$ 6,106	$ 85,856
Deferered income taxes	$ 4,082	$ 1,584	$ 5,666
Accumulated earnings (deficit)	$ 12,058	$ 4,522	$ 16,580

Consolidated Statement of Cash Flows	**For the three months ended March 31, 2020**		
	As Originally Reported	**Effect of Change (a)**	**As Adjusted**
Consolidated net income	$ 3,275	$ -	$ 3,275
Deferred income taxes	$ 545	$ -	$ 545
Inventories	$ 1,784	$ -	$ 1,784

(a) There was no LIFO impact for the three months ended March 31, 2020.

The components of inventories are as follows:

	March 31, 2021	**December 31, 2020**
Raw materials and work in process	$ 7,519	$ 8,137
Leaf tobacco	41,707	32,948
Finished goods - Zig-Zag Products	21,477	14,903
Finished goods - Stoker's Products	9,777	9,727
Finished goods - NewGen products	16,668	18,916
Other	1,203	1,225
Inventory	$ 98,351	$ 85,856

The inventory valuation allowance was $9.6 million and $9.9 million as of March 31, 2021, and December 31, 2020, respectively.

Note 7. Other Current Assets

Other current assets consist of:

	March 31, 2021	December 31, 2020
Inventory deposits	$ 7,369	$ 7,113
Insurance deposit	3,000	3,000
Prepaid taxes	526	813
Other	13,971	15,525
Total	$ 24,866	$ 26,451

Note 8. Property, Plant, and Equipment

Property, plant, and equipment consists of:

	March 31, 2021	December 31, 2020
Land	$ 22	$ 22
Buildings and improvements	2,750	2,750
Leasehold improvements	4,702	4,702
Machinery and equipment	16,499	15,612
Furniture and fixtures	9,025	9,025
Gross property, plant and equipment	32,998	32,111
Accumulated depreciation	(17,350)	(16,587)
Net property, plant and equipment	$ 15,648	$ 15,524

Note 9. Other Assets

Other assets consist of:

	March 31, 2021	December 31, 2020
Equity investments	$ 24,016	$ 24,018
Other	2,357	2,818
Total	$ 26,373	$ 26,836

Note 10. Accrued Liabilities

Accrued liabilities consist of:

	March 31, 2021	December 31, 2020
Accrued payroll and related items	$ 3,664	$ 9,459
Customer returns and allowances	5,683	5,259
Taxes payable	7,025	4,326
Lease liabilities	3,269	3,228
Accrued interest	2,924	2,096
Other	9,280	10,857
Total	$ 31,845	$ 35,225

Note 11. Notes Payable and Long-Term Debt

Notes payable and long-term debt consists of the following in order of preference:

	March 31, 2021	December 31, 2020
Senior Secured Notes	$ 250,000	$ -
2018 First Lien Term Loan	-	130,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	10,000
Note payable - Unsecured Loan	7,485	7,485
Gross notes payable and long-term debt	439,985	319,985
Less deferred finance charges	(10,183)	(5,873)
Less current maturities	(5,000)	(12,000)
Notes payable and long-term debt	$ 424,802	$ 302,112

Senior Secured Notes

On February 11, 2021, the Company closed a private offering (the "Offering") of $250 million aggregate principal amount of its 5.625% senior secured notes due 2026 (the "Senior Secured Notes"). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. Interest on the Senior Secured Notes is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on August 15, 2021.The Company used the proceeds from the Offering (i) to repay all obligations under and terminate the 2018 First Lien Credit Facility, (ii) to pay related fees, costs, and expenses and (iii) for general corporate purposes.

Obligations under the Senior Secured Notes are guaranteed by the Company's existing and future wholly-owned domestic subsidiaries (the "Guarantors") that guarantee any Credit Facility (as defined in the Indenture governing the Senior Secured Notes or the "Senior Secured Notes Indenture") or capital markets debt securities of the Company or Guarantors in excess of $15.0 million. The Senior Secured Notes and the related guarantees are secured by first-priority liens on substantially all of the assets of the Company and the Guarantors, subject to certain exceptions.

The Company may redeem the Senior Secured Notes, in whole or in part, at any time prior to February 15, 2023, at a price equal to 100% of the principal amount of the Notes redeemed plus accrued and unpaid interest, if any, to, but excluding the applicable redemption date, plus a "make-whole" premium. Thereafter, the Company may redeem the Senior Secured Notes, in whole or in part, at established redemption prices, set forth in the Senior Secured Notes Indenture, plus accrued and unpaid interest, if any. In addition, on or prior to February 15, 2023, the Company may redeem up to 40% of the aggregate principal amount of the Senior Secured Notes with the net cash proceeds from certain equity offerings at a redemption price equal to 105.625%, plus accrued and unpaid interest, if any to the redemption date; provided, however, that at least 50% of the original aggregate principal amount of the Senior Secured Notes (calculated after giving effect to the issuance of any additional notes) remains outstanding. In addition, at any time and from time to time prior to February 15, 2023, but not more than once in any twelve-month period, the Company may redeem up to 10% of the aggregate principal amount of the Senior Secured Notes at a redemption price of 103% of the aggregate principal amount of Senior Secured Notes redeemed plus accrued and unpaid interest, if any to but not including the redemption date, on the Senior Secured Notes to be redeemed.

If the Company experiences a change of control (as defined in the Senior Secured Notes Indenture), the Company must offer to repurchase the Senior Secured Notes at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest.

The Indenture contains covenants that, among other things, restrict the ability of the Company and its restricted subsidiaries to: (i) grant or incur liens; (ii) incur, assume or guarantee additional indebtedness; (iii) sell or otherwise dispose of assets, including capital stock of subsidiaries; (iv) make certain investments; (v) pay dividends, make distributions or redeem or repurchase capital stock; (vi) engage in certain transactions with affiliates; and (vii) consolidate or merge with or into, or sell substantially all of our assets to another entity. These covenants are subject to a number of limitations and exceptions set forth in the Indenture.

The Company incurred debt issuance costs attributable to the issuance of the Senior Secured Notes of $6.4 million which are amortized to interest expense using the effective interest method over the expected life of the Senior Secured Notes.

The Indenture provides for customary events of default.

2021 Revolving Credit Facility

In connection with the Offering, the Company also entered into a new $25 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto (the "Lenders") and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). The 2021 Revolving Credit Facility provides for a revolving line of credit of up to $25.0 million. Letters of credit are limited to $10 million (and are a part of, and not in addition to, the revolving line of credit). The Company has not drawn any borrowings under the 2021 Revolving Credit Facility but does have letters of credit of approximately $3.6 million outstanding under the facility. The 2021 Revolving Credit Facility will mature on August 11, 2025 if none of the Company's Convertible Senior Notes are outstanding, and if any Convertible Senior Notes are outstanding, the date which is 91 days prior to the maturity date of July 15, 2024 for such Convertible Senior Notes.

Interest is payable on the 2021 Revolving Credit Facility at a fluctuating rate of interest determined by reference to the Eurodollar rate plus an applicable margin of 3.50% (with step-downs upon de-leveraging). The Company also has the option to borrow at a rate determined by reference to the base rate.

The obligations under the 2021 Revolving Credit Agreement are guaranteed on a joint and several basis by the Guarantors. The Company's and Guarantors' obligations under the 2021 Revolving Credit Facility are secured on a pari passu basis with the Senior Secured Notes.

The 2021 Revolving Credit Agreement contains covenants that are substantially the same as the covenants in the Senior Secured Notes Indenture. The 2021 Revolving Credit Facility also requires the maintenance of a Consolidated Leverage Ratio (as defined in the 2021 Revolving Credit Agreement) of 5.50 to 1.00 (with a step down to 5.25 to 1.00 beginning with the fiscal quarter ending March 31, 2023) at the end of each fiscal quarter when extensions of credit under the 2021 Revolving Credit Facility and certain drawn and undrawn letters of credit (excluding (a) letters of credit that have been cash collateralized and (b) letters of credit having an aggregate face amount less than $5,000,000) in the aggregate outstanding exceeds 35% of the total commitments under the 2021 Revolving Credit Facility.

The Company incurred debt issuance costs attributable to the issuance of the 2021 Revolving Credit Facility of $0.5 million which are amortized to interest expense using the effective interest method over the expected life of the 2021 Revolving Credit Facility.

The 2021 Revolving Credit Agreement provides for customary events of default.

2018 Credit Facility

On March 7, 2018, the Company entered into $250 million of credit facilities consisting of a $160 million 2018 First Lien Term Loan and a $50 million 2018 Revolving Credit Facility (collectively, the "2018 First Lien Credit Facility"), in each case, with Fifth Third Bank, as administrative agent, and other lenders, in addition to a $40 million 2018 Second Lien Term Loan (the "2018 Second Lien Credit Facility," and, together with the 2018 First Lien Credit Facility, the "2018 Credit Facility") with Prospect Capital Corporation, as administrative agent, and other lenders. The 2018 Credit Facility contained a $40 million accordion feature.

The 2018 Credit Facility contained customary events of default including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts, and change in control defaults. The 2018 Credit Facility also contained certain negative covenants customary for facilities of these types including covenants that, subject to exceptions described in the 2018 Credit Facility, restrict the ability of the Company and its subsidiary guarantors: (i) to pledge assets, (ii) to incur additional indebtedness, (iii) to pay dividends, (iv) to make distributions, (v) to sell assets, and (vi) to make investments. See Note 19, "Dividends and Share Repurchase", for further information regarding dividend restrictions.

2018 First Lien Credit Facility: The 2018 First Lien Term Loan and the 2018 Revolving Credit Facility bore interest at LIBOR plus a spread of 2.75% to 3.50% based on the Company's senior leverage ratio. The 2018 First Lien Term Loan had quarterly required payments of $2.0 million beginning June 30, 2018, increasing to $3.0 million on June 30, 2020, and increasing to $4.0 million on June 30, 2022. The 2018 First Lien Credit Facility had a maturity date of March 7, 2023. The 2018 First Lien Term Loan was secured by a first priority lien on substantially all of the assets of the borrowers and the guarantors thereunder, other than certain excluded assets (the "Collateral"). In connection with the Convertible Senior Notes offering, the Company entered into a First Amendment ("the Amendment") to the First Lien Credit Agreement, with Fifth Third Bank, as administrative agent, and other lenders and certain other lender parties thereto. The Amendment was entered into primarily to permit the Company to issue up to $200 million of convertible senior notes, enter into certain capped call transactions in connection with the issuance of such notes and to use the proceeds from the issuance of the notes to repay amounts outstanding under the 2018 Second Lien Credit Facility and use the remaining proceeds for acquisitions and investments. In connection with the Amendment, fees of $0.7 million were incurred. The 2018 First Lien Credit Facility contained certain financial covenants, which were amended in connection with the Convertible Senior Notes offering in the third quarter 2019. The covenants included maximum senior leverage ratio of 3.00x with step-downs to 2.50x, a maximum total leverage ratio of 5.50x with step-downs to 5.00x, and a minimum fixed charge coverage ratio of 1.20x. In the first quarter of 2020, the financial covenants were amended to permit certain add-backs related to PMTA in the definition of Consolidated EBITDA for the period of October 1, 2019 until September 30, 2020. In connection with the Amendment, fees of $0.2 million were incurred. The Company used a portion of the proceeds from the issuance of the Senior Secured Notes to prepay all outstanding amounts under and terminate the 2018 First Lien Credit Facility in the first quarter 2021 in the amount of $130.0 million, and the transaction resulted in a $5.7 million loss on extinguishment of debt.

Convertible Senior Notes

In July 2019, the Company closed an offering of $172.5 million in aggregate principal amount of its 2.50%Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes will mature on July 15, 2024, unless earlier repurchased, redeemed or converted. The Convertible Senior Notes are senior unsecured obligations of the Company.

The Convertible Senior Notes are convertible into approximately 3,205,895 shares of TPB Common Stock under certain circumstances prior to maturity at a conversion rate of 18.585 shares per $1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately $53.81 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. The conversion price is adjusted periodically as a result of dividends paid by the Company, in excess of pre-determined thresholds of $0.04 per share. Upon conversion, the Company may pay cash, shares of common stock or a combination of cash and stock, as determined by the Company at its discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of March 31, 2021.

The Company early adopted ASU 2020-06 effective January 1, 2021 on a retrospective basis to all periods presented. Under ASU 2020-06, the Company will account for the Convertible Senior Notes entirely as a liability and will no longer separately account for the Convertible Senior Notes with liability and equity components. See note 2 for further discussion of the impact of the adoption of ASU 2020-06.

The Company incurred debt issuance costs attributable to the Convertible Senior Notes of $5.9 million which are amortized to interest expense using the effective interest method over the expected life of the Convertible Senior Notes.

In connection with the Convertible Senior Notes offering, the Company entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of $53.81 per and a cap price of $82.86 per share, and are exercisable when, and if, the Convertible Senior Notes are converted. The Company paid $20.53 million for these capped calls at the time they were entered into and charged that amount to additional paid-in capital.

Promissory Note

On June 10, 2020, in connection with the acquisition of certain Durfort assets, the Company issued the Promissory Note in the principal amount of $10.0 million (the "Principal Amount"), with an annual interest rate of 7.5%, payable quarterly, with the first payment due September 10, 2020. The Principal Amount is payable in two $5.0 million installments, with the first installment due 18 months after the closing date of the acquisition (June 10, 2020), and the second installment due 36 months after the closing date of the acquisition. The second installment is subject to reduction for certain amounts payable to the Company as a holdback.

Unsecured Loan

On April 6, 2020, the 2018 First Lien Credit Facility was amended to allow for an unsecured loan under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES"). On April 17, 2020, National Tobacco Company, L.P., a subsidiary of the Company, entered into a loan agreement with Regions Bank guaranteed by the Small Business Administration for a $7.5 million unsecured loan. The proceeds of the loan were received on April 27, 2020. The loan is scheduled to mature on April 17, 2022 and has a 1.00% interest rate.

Note Payable – IVG

In September 2018, the Company issued a note payable to IVG's former shareholders ("IVG Note"). The IVG Note had a principal amount of $4.0 million with an interest rate of 6.0% per year and matured on March 5, 2020. All principal and accrued and unpaid interest under the IVG Note were subject to indemnification obligations of the sellers pursuant to the International Vapor Group Stock Purchase Agreement dated as of September 5, 2018. The carrying amount of the IVG Note, $4.2 million, was deposited into an escrow account pending agreement with the sellers of any indemnification obligations.

Note 12. Leases

The Company's leases consist primarily of leased property for manufacturing warehouse, head offices and retail space as well as vehicle leases. At lease inception, the Company recognizes a lease right of use asset and lease liability calculated as the present value of future minimum lease payments. In general, the Company does not recognize any renewal periods within the lease terms as there are no significant barriers to ending the lease at the initial term. Lease and non-lease components are accounted for as a single lease component.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. Lease expense for these leases is recognized on a straight-line basis over the lease term.

The components of lease expense consisted of the following:

	Three Months Ended March 31,	
	2021	2020
Operating lease cost		
Cost of sales	$ 225	$ 233
Selling, general and administrative	752	398
Variable lease cost (1)	205	312
Short-term lease cost	11	83
Sublease income	(30)	(30)
Total	$ 1,163	$ 996

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

	March 31, 2021	December 31, 2020
Assets:		
Right of use assets	$ 17,406	$ 17,918
Total lease assets	$ 17,406	$ 17,918
Liabilities:		
Current lease liabilities (2)	$ 3,269	$ 3,228
Long-term lease liabilities	15,570	16,117
Total lease liabilities	$ 18,839	$ 19,345

(2) Reported within accrued liabilities on the balance sheet

	As of March 31,	
	2021	2020
Weighted-average remaining lease term - operating leases	7.1 years	7.8 years
Weighted-average discount rate - operating leases	4.93%	5.84%

Nearly all the lease contracts for the Company do not provide a readily determinable implicit interest rate. For these contracts, the Company uses a discount rate that approximates its incremental borrowing rate at the time of the lease commencement.

As of March 31, 2021, maturities of lease liabilities consisted of the following:

	March 31, 2021
2021	$ 3,078
2022	3,795
2023	3,528
2024	2,485
2025	2,125
Years thereafter	7,427
Total lease payments	$ 22,438
Less: Imputed interest	3,599
Present value of lease liabilities	$ 18,839

Note 13. Income Taxes

The Company's effective income tax rate for the three ended March 31, 2021, was 18.7% which includes a discrete tax deduction of $3.3 million for the three months ended March 31, 2021 relating to stock option exercises. The Company's effective income tax rate for the three months ended March 31, 2020, was 23.8% which includes a discrete tax deduction of $0.7 million for the three months ended March 31, 2020 relating to stock option exercises.

The Company follows the provisions of ASC 740-10-25, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. The Company has determined that the Company did not have any uncertain tax positions requiring recognition under the provisions of ASC 740-10-25. The Company's policy is to recognize interest and penalties accrued on uncertain tax positions, if any, as part of interest expense. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, the Company is no longer subject to U.S. federal and state tax examinations for years prior to 2017.

Note 14. Pension and Postretirement Benefit Plans

The Company had a defined benefit pension plan. Benefits for hourly employees were based on a stated benefit per year of service, reduced by amounts earned in a previous plan. Benefits for salaried employees were based on years of service and the employees' final compensation. The Company's policy was to make the minimum amount of contributions that can be deducted for federal income taxes. The Company made no contributions to the pension plan in 2020. In October 2019, the Company elected to terminate the defined benefit pension plan, effective December 31, 2019 with final distributions made in third quarter of 2020.

The Company sponsored a defined benefit postretirement plan that covered hourly employees. This plan provided medical and dental benefits. This plan was contributory with retiree contributions adjusted annually. The Company's policy was to make contributions equal to benefits paid during the year. In October 2019, the Company amended the plan to cease benefits effective June 30, 2020.

The following table provides the components of net periodic pension and postretirement benefit costs and total costs for the plans:

	Three Months Ended March 31,			
	Pension Benefits		Postretirement Benefits	
	2021	2020	2021	2020
Service cost	$ -	$ -	$ -	$ -
Interest cost	-	95	-	-
Expected return on plan assets	-	(161)	-	-
Amortization of (gains) losses	-	36	-	(57)
Net periodic benefit income	$ -	$ (30)	$ -	$ (57)

Note 15. Share Incentive Plans

On March 22, 2021, the Company's Board of Directors adopted the Turning Point Brands, Inc. 2021 Equity Incentive Plan (the "2021 Plan"), subject to the approval of our shareholders, pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2021 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2021 Plan, 1,290,000 shares, plus any shares remaining available for issuance under the 2015 Equity Incentive Plan (the "2015 Plan"), of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2021 Plan is scheduled to terminate on March 21, 2031. The 2021 Plan is administered by the compensation committee (the "Committee") of the Company's Board of Directors. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of March 31, 2021, there were no awards granted under the 2021 Plan. There are 1,290,000 shares, plus any shares remaining available for issuance under the 2015 Plan, available for grant under the 2021 Plan. The Company intends on seeking shareholder approval of the plan at its 2021 annual meeting of shareholders. Until the 2021 Plan is approved by shareholders, no awards may be issued thereunder.

On April 28, 2016, the Board of Directors of the Company adopted the Turning Point Brands, Inc., the 2015 Plan, pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2015 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2015 Plan, 1,400,000 shares of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2015 Plan is scheduled to terminate on April 27, 2026. The 2015 Plan is administered by the Committee. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of March 31, 2021, net of forfeitures, there were 16,159 shares of restricted stock, 563,911 PRSUs, and 707,878 options granted under the 2015 Plan. There are 112,052 shares available for grant under the 2015 Plan. The 2015 Plan will terminate upon approval by the Company's shareholders of the 2021 Plan. However, all awards issued under the 2015 Plan that have not been previously terminated or forfeited will remain outstanding and continue unaffected upon termination of the plan.

On February 8, 2006, the Board of Directors of the Company adopted the 2006 Equity Incentive Plan (the "2006 Plan") of North Atlantic Holding Company, Inc., pursuant to which awards may be granted to employees. The 2006 Plan provides for the granting of nonqualified stock options and restricted stock awards to employees. Upon the adoption of the Company's 2015 Equity Incentive Plan in connection with its IPO, the Company determined no additional grants would be made under the 2006 Plan. However, all awards issued under the 2006 Plan that have not been previously terminated or forfeited remain outstanding and continue unaffected.

There are no shares available for grant under the 2006 Plan. Stock option activity for the 2006 and 2015 Plans is summarized below:

	Stock Option Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2019	696,716	$ 18.13	$ 6.17
Granted	155,000	14.85	4.41
Exercised	(135,146)	6.37	2.74
Forfeited	(5,510)	27.25	8.64
Outstanding, December 31, 2020	711,060	19.58	6.42
Granted	100,000	51.75	13.77
Exercised	(74,615)	5.70	2.66
Forfeited	(850)	21.63	6.15
Outstanding, March 31, 2021	735,595	$ 25.36	$ 7.80

Under the 2006 and 2015 Plans, the total intrinsic value of options exercised during the three months ended March 31, 2021 and 2020, was $3.3 million, and $0.9 million, respectively.

At March 31,2021, under the 2006 Plan, the outstanding stock options' exercise price for 133,612 options is $3.83 per share, all of which are exercisable. The weighted average of the remaining lives of the outstanding stock options with an exercise price of $3.83 is approximately 2.89 years. The Company estimates the expected life of these stock options is ten years from the date of grant. For the $3.83 per share options, the weighted average fair value of options was determined using the Black-Scholes model assuming a ten-year life from grant date, a current share price and exercise price of $3.83, a risk-free interest rate of 3.57%, volatility of 40%, and no assumed dividend yield. Based on these assumptions, the fair value of these options is approximately $2.17 per share option granted.

At March 31, 2021, under the 2015 Plan, the risk-free interest rate is based on the U.S. Treasury rate for the expected life at the time of grant. The expected volatility is based on the average long-term historical volatilities of peer companies. We intend to continue to consistently use the same group of publicly traded peer companies to determine expected volatility until sufficient information regarding volatility of our share price becomes available or until the selected companies are no longer suitable for this purpose. Due to our limited trading history, we are using the simplified method presented by SEC Staff Accounting Bulletin No. 107 to calculate expected holding periods, which represent the periods of time for which options granted are expected to be outstanding. We will continue to use this method until we have sufficient historical exercise experience to give us confidence in the reliability of our calculations. The fair values of these options were determined using the Black-Scholes option pricing model.

The following table outlines the assumptions based on the number of options granted under the 2015 Plan.

	February 10, 2017	May 17, 2017	March 7, 2018	March 13, 2018	March 20, 2019	October 24, 2019	March 18, 2020	February 18, 2021
Number of options granted	40,000	93,819	98,100	26,000	155,780	25,000	155,000	100,000
Options outstanding at March 31, 2021	27,050	54,183	77,967	26,000	144,134	25,000	147,799	99,850
Number exercisable at March 31, 2021	27,050	54,183	77,967	26,000	96,076	16,750	47,413	-
Exercise price	$ 13.00	$ 15.41	$ 21.21	$ 21.49	$ 47.58	$ 20.89	$ 14.85	$ 51.75
Remaining lives	5.87	6.13	6.94	6.96	7.98	8.57	8.97	9.89
Risk free interest rate	1.89%	1.76%	2.65%	2.62%	2.34%	1.58%	0.79%	0.56%
Expected volatility	27.44%	26.92%	28.76%	28.76%	30.95%	31.93%	35.72%	28.69%
Expected life	6.000	6.000	6.000	5.495	6.000	6.000	6.000	6.000
Dividend yield	-	-	0.83%	0.82%	0.42%	0.95%	1.49%	0.55%
Fair value at grant date	$ 3.98	$ 4.60	$ 6.37	$ 6.18	$ 15.63	$ 6.27	$ 4.41	$ 13.77

The Company has recorded compensation expense related to the options based on the provisions of ASC 718 under which the fixed portion of such expense is determined as the fair value of the options on the date of grant and amortized over the vesting period. The Company recorded compensation expense related to the options of approximately $0.3 million and $0.2 million for the three months ended March 31, 2021 and 2020, respectively. Total unrecognized compensation expense related to options at March 31, 2021, is $1.7 million, which will be expensed over 2.36 years.

Performance-Based Restricted Stock Units

PRSUs are restricted stock units subject to both performance-based and service-based vesting conditions. The number of shares of TPB Common Stock a recipient will receive upon vesting of a PRSU will be calculated by reference to certain performance metrics related to the Company's performance over a five-year period. PRSUs will vest on the measurement date, which is no more than 65 days after the performance period provided the applicable service and performance conditions are satisfied. As of March 31, 2021, there are 563,911 PRSUs outstanding, all of which are unvested. The following table outlines the PRSUs granted and outstanding as of March 31, 2021.

	March 31, 2017	March 7, 2018	March 20, 2019	March 20, 2019	July 19, 2019	March 18, 2020	December 28, 2020	February 18, 2021

Number of PRSUs granted	94,000	96,000	92,500	4,901	88,582	94,000	88,169	100,000
PRSUs outstanding at March 31, 2021	83,000	93,000	85,250	-	21,342	93,350	88,169	99,800
Fair value as of grant date	$ 15.60	$ 21.21	$ 47.58	$ 47.58	$ 52.15	$ 14.85	$ 46.42	$ 51.75
Remaining lives	0.75	1.75	2.75	-	1.75	3.75	2.75	4.75

The Company recorded compensation expense related to the PRSUs of approximately $1.2 million and $0.2 million in the consolidated statements of income for the three months ended March 31,2021 and 2020, respectively, based on the probability of achieving the performance condition. Total unrecognized compensation expense related to these awards at March 31, 2021, is $12.6 million which will be expensed over the service periods based on the probability of achieving the performance condition.

Note 16. Contingencies

On October 9, 2020, a purported stockholder of Turning Point Brands, Inc., Paul-Emile Berteau, filed a complaint in the Delaware Court of Chancery relating to the merger of SDI with a subsidiary of the Company pursuant to the Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub (the "SDI Merger"). The complaint asserts two derivative counts purportedly on behalf of TPB for breaches of fiduciary duty against the Board of Directors of Turning Point Brands, Inc. and other parties. The third count asserts a direct claim against the Company and its Board of Directors seeking a declaration that TPB's Bylaws are inconsistent with TPB's certificate of incorporation. While the Company believes it has good and valid defenses to the claims, there can be no assurance that the Company will prevail in this case, and it could have a material adverse effect on the Company's business and results of operations.

Other major tobacco companies are defendants in product liability claims. In a number of these cases, the amounts of punitive and compensatory damages sought are significant and could have a material adverse effect on our business and results of operations. The Company is subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices or consumption of e-liquids and may be subject to claims in the future relating to other NewGen products. The Company is still evaluating these claims and the potential defenses to them. For example, the Company did not design or manufacture the products at issue; rather, the Company was merely the distributor. Nonetheless, there can be no assurance that the Company will prevail in these cases, and they could have a material adverse effect on the financial position, results of operations, or cash flows of the Company.

We have several subsidiaries engaged in making, distributing, and selling vapor products. As a result of the overall publicity and controversy surrounding the vapor industry generally, many companies have received informational subpoenas from various regulatory bodies and in some jurisdictions regulatory lawsuits have been filed regarding marketing practices and possible underage sales. We expect that our subsidiaries will be subject to some such cases and investigative requests. In the acquisition of the vapor businesses, we negotiated financial "hold-backs", which we expect to be able to use to defray expenses associated with the information production and the cost of defending any such lawsuits as well as the franchisee lawsuit. To the extent that litigation becomes necessary, we believe that the subsidiaries have strong factual and legal defenses against claims that they unfairly marketed vapor products.

We have two franchisor subsidiaries. Like many franchise businesses, in the ordinary course of their business, these subsidiaries are from time to time responding parties to arbitration demands brought by franchisees. One of our subsidiaries, which we acquired in 2018, is the franchisor of the VaporFi system. This subsidiary is a responding party in an arbitration brought by a franchisee claiming, among other things, violations of Federal Trade Commission Rules and Florida law. These allegations relate to the franchise disclosure document (FDD) utilized by the franchise system, a small vapor store chain, prior to our acquisition of the chain in 2018. We believe that we have good and valid substantive defenses against these claims and will vigorously defend ourselves in the arbitration.

We have also been named in a lawsuit brought by a different franchisee represented by the same firm that represents the plaintiff in the action described above. This case relates to the termination of the franchise agreement by the franchisor for failure to pay franchising fees and our subsequent demand that the franchisee cease using our marks and de-image locations formerly housing the franchises. The franchisee filed suit against us in the U.S. District Court for the Southern District of Florida sixteen months after our demand. The franchisee is claiming tortious interference and conversion. We believe that the suit was improperly brought before the U.S. District Court for the South District of Florida because the related franchising agreements included a mandatory arbitration clause. We also believe we have valid substantive defenses against the claims and intend on vigorously defending our interests in this matter.

Note 17. Income Per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted EPS computations of net income:

	Three Months Ended March 31,					
	2021			2020		
	Income	Shares	Per Share	Income	Shares	Per Share
Basic EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Denominator						
Weighted average		19,093,961	$ 0.62		19,689,446	$ 0.23
Diluted EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Interest expense related to Convertible Senior Notes, net of tax	1,054			-		
Diluted net income attributable to Turning Point Brands. Inc.	$ 12,837			$ 4,499		
Denominator						
Basic weighted average		19,093,961			19,689,446	
Convertible Senior Notes		3,205,895			-	
Stock options		365,211			417,354	
		22,665,067	$ 0.57		20,106,800	$ 0.22

For the three months ended March 31, 2020, the effect of the 3,202,808 shares issuable upon conversion of the Convertible Senior Notes were excluded from the diluted net income per share calculation because the effect would have been antidilutive.

Note 18. Segment Information

In accordance with ASC 280, Segment Reporting, the Company has three reportable segments: (1) Zig-Zag Products; (2) Stoker's Products; and (3) NewGen Products. The Zig-Zag Products segment markets and distributes (a) rolling papers, tubes, and related products; and (b) finished cigars and MYO cigar wraps. The Stoker's Products segment (a) manufactures and markets moist snuff and (b) contracts for and markets loose leaf chewing tobacco products. The NewGen Products segment (a) markets and distributes CBD, liquid vapor products and certain other products without tobacco and/or nicotine; (b) distributes a wide assortment of products to non-traditional retail outlets via VaporBeast; and (c) markets and distributes a wide assortment of products to individual consumers via the VaporFi B2C online platform. Products in the Zig-Zag Products and Stoker's Products segments are distributed primarily through wholesale distributors in the United States while products in the NewGen Products segment are distributed primarily through e-commerce to non-traditional retail outlets and direct to consumers in the United States. The Other segment includes the costs and assets of the Company not assigned to one of the three reportable segments such as intercompany transfers, deferred taxes, deferred financing fees, and investments in subsidiaries.

The accounting policies of these segments are the same as those of the Company. Corporate costs are not directly charged to the three reportable segments in the ordinary course of operations. The Company evaluates the performance of its segments and allocates resources to them based on operating income.

The tables below present financial information about reported segments:

	Three Months Ended March 31,	
	2021	2020
Net sales		
Zig-Zag products	$ 41,004	$ 28,914
Stoker's products	29,255	26,495
NewGen products	37,382	35,280
Total	$ 107,641	$ 90,689
Gross profit		
Zig-Zag products	$ 24,896	$ 16,132
Stoker's products	15,892	13,874
NewGen products	12,473	11,425
Total	$ 53,261	$ 41,431
Operating income (loss)		
Zig-Zag products	$ 19,437	$ 12,417
Stoker's products	12,255	9,746
NewGen products	2,006	477
Corporate unallocated [1][2]	(9,349)	(13,603)
Total	$ 24,349	$ 9,037
Interest expense, net	4,486	3,309
Investment income	(25)	(91)
Loss on extinguishment of debt	5,706	-
Net periodic income, excluding service cost	-	(87)
Income before income taxes	$ 14,182	$ 5,906
Capital expenditures		
Zig-Zag products	$ -	$ -
Stoker's products	840	860
NewGen products	2	17
Total	$ 842	$ 877
Depreciation and amortization		
Zig-Zag products	$ 114	$ -
Stoker's products	635	519
NewGen products	516	757
Total	$ 1,265	$ 1,276

(1) Includes corporate costs that are not allocated to any of the three reportable segments.
(2) Includes costs related to PMTA of $5.9 million in 2020.

	March 31, 2021	December 31, 2020
Assets		
Zig-Zag products	$ 212,400	$ 206,900
Stoker's products	148,093	133,016
NewGen products	91,616	91,116
Corporate unallocated (1)	175,196	65,017
Total	$ 627,305	$ 496,049

(1) Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Revenue Disaggregation—Sales Channel

Revenues of the Zig-Zag Products and Stoker's Products segments are primarily comprised of sales made to wholesalers while NewGen sales are made business to business and business to consumer, both online and through our corporate retail stores. NewGen net sales are broken out by sales channel below.

	NewGen Segment	
	Three Months Ended March 31,	
	2021	2020
Business to Business	$ 27,257	$ 25,278
Business to Consumer - Online	10,033	8,134
Business to Consumer - Corporate store	-	1,794
Other	92	74
Total	$ 37,382	$ 35,280

Net Sales—Domestic vs. Foreign

The following table shows a breakdown of consolidated net sales between domestic and foreign customers.

	Three Months Ended March 31,	
	2021	2020
Domestic	$ 100,127	$ 87,568
Foreign	7,514	3,121
Total	$ 107,641	$ 90,689

Note 19. Dividends and Share Repurchase

The most recent dividend of $0.055 per common share was paid on April 9, 2021, to shareholders of record at the close of business on March 19, 2021.

Dividends are considered restricted payments under the Senior Secured Notes Indenture and Revolving Credit Facility. The Company is generally permitted to make restricted payments provided that, at the time of payment, or as a result of payment, the Company is not in default on its debt covenants. Additional earnings and market capitalization restrictions limit the aggregate amount of restricted, quarterly dividends during a fiscal year.

On February 25, 2020, the Company's Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The program is subject to the ongoing discretion of the Board. The total number of shares repurchased for the three months ended March 31, 2021, was 119,031 shares for a total cost of $5.7 million and an average price per share of $48.16. $34.1 million remains available for share repurchases under the program at March 31, 2021.

Note 20. Subsequent Events

On April 19, 2021, the Company invested $8.7 million in Docklight Brands, Inc., a pioneering consumer products company with celebrated brands including *Marley Natural*® cannabis and *Marley*™ CBD. The Company has additional follow-on investment rights. As part of the investment, the Company has obtained exclusive U.S. distribution rights for Docklight's *Marley*™ CBD topical products.

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

You should read the following discussion of the historical financial condition and results of operations in conjunction with our historical consolidated financial statements and accompanying notes, which are included elsewhere in this Quarterly Report on Form 10-Q. In addition, this discussion includes forward-looking statements subject to risks and uncertainties that may result in actual results differing from statements we make. See "Cautionary Note Regarding Forward-Looking Statements." Factors that could cause actual results to differ include those risks and uncertainties discussed in "Risk Factors."

The following discussion relates to the unaudited financial statements of Turning Point Brands, Inc., included elsewhere in this Quarterly Report on Form 10-Q. In this discussion, unless the context requires otherwise, references to "our Company" "we," "our," or "us" refer to Turning Point Brands, Inc., and its consolidated subsidiaries. References to "TPB" refer to Turning Point Brands, Inc., without any of its subsidiaries. We were incorporated in 2004 under the name North Atlantic Holding Company, Inc. On November 4, 2015, we changed our name to Turning Point Brands, Inc. Many of the amounts and percentages in this discussion have been rounded for convenience of presentation.

Overview

Turning Point Brands, Inc. (the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® to our next generation products to fulfill evolving consumer preferences. Among other markets, we compete in the alternative smoking accessories and Other Tobacco Products ("OTP") industries. The alternative smoking accessories market is a dynamic market experiencing robust secular growth driven by cannabinoid legalization in the U.S. and Canada, and positively evolving consumer perception and acceptance in North America. The OTP industry, which consists of non-cigarette tobacco products, exhibited low double-digit consumer unit growth in 2020 as reported by Management Science Associates, Inc. ("MSAi"), a third-party analytics and information company. Our three focus segments are led by our core, proprietary brands: *Zig-Zag*® in the Zig-Zag Products segment; *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment; and *Nu-X*™, *Solace*® along with our distribution platforms (*Vapor Beast*®, *VaporFi*® and *Direct Vapor*®) in the NewGen Products segment. Our businesses generate solid cash flow which we use to finance acquisitions, increase brand support, expand our distribution infrastructure, and strengthen our capital position. We currently ship to approximately 800 distributors with an additional 200 secondary, indirect wholesalers in the U.S. that carry and sell our products. Under the leadership of a senior management team with extensive experience in the consumer products, alternative smoking accessories and tobacco industries, we have grown and diversified our business through new product launches, category expansions, and acquisitions while concurrently improving operational efficiency.

We have identified additional growth opportunities in the emerging alternatives market. In January 2019, we established Nu-X Ventures LLC ("Nu-X"), a new wholly owned subsidiary dedicated to the development, production and sale of alternative products and acquisitions in related spaces. The creation of Nu-X allows us to leverage our expertise in traditional OTP management to alternative products. Our management team has extensive experience navigating federal, state and local regulations that are directly applicable to the growing alternatives market. In July 2019, we acquired the assets of Solace Technology ("Solace"). Solace is an innovative product development company which established one of the top e-liquid brands and has since grown into a leader in alternative products. Solace's legacy and innovation enhanced Nu-X's strong and nimble development engine.

We believe there are meaningful opportunities to grow through acquisitions and joint ventures across all product categories. As of December 31, 2020, our products are available in approximately 190,000 U.S. retail locations which, with the addition of retail stores in Canada, brings our total North American retail presence to an estimated 210,000 points of distribution. Our sales team targets widespread distribution to all traditional retail channels, including convenience stores, and we have a growing e-commerce business.

Products

We operate in three segments: Zig-Zag Products, Stoker's Products and NewGen Products. In our Zig-Zag Products segment, we principally market and distribute (i) rolling papers, tubes, and related products; and (ii) finished cigars and make-your-own ("MYO") cigar wraps. In our Stoker's Products segment, we (i) manufacture and market moist snuff tobacco ("MST") and (ii) contract for and market loose leaf chewing tobacco products. In our NewGen Products segment, we (i) market and distribute CBD, liquid vapor products

and certain other products without tobacco and/or nicotine; (ii) distribute a wide assortment of products to non-traditional retail via VaporBeast; and (iii) market and distribute a wide assortment of products to individual consumers via the VaporFi B2C online platform.

Operations

Our core Zig-Zag Products and Stoker's Products segments primarily generate revenues from the sale of our products to wholesale distributors who, in turn, resell the products to retail operations. In our NewGen Products segment, our acquisition of VaporBeast in 2016 expanded our revenue streams as we began selling directly to non-traditional retail outlets. Our acquisition of IVG in 2018 enhanced our B2C revenue stream with the addition of the Vapor-Fi online platform. The acquisition of Solace provided us with a line of leading liquids and a powerful new product development platform. Our net sales, which include federal excise taxes, consist of gross sales net of cash discounts, returns, and selling and marketing allowances.

We rely on long-standing relationships with high-quality, established manufacturers to provide the majority of our produced products. More than 80% of our production, as measured by net sales, is outsourced to suppliers. The remaining production consists primarily of our moist snuff tobacco operations located in Dresden, Tennessee, and Louisville, Kentucky. Our principal operating expenses include the cost of raw materials used to manufacture the limited number of our products which we produce in-house; the cost of finished products, which are generally purchased goods; federal excise taxes; legal expenses; and compensation expenses, including benefits and costs of salaried personnel. Our other principal expenses include interest expense and other expenses.

Key Factors Affecting Our Results of Operations

We consider the following to be the key factors affecting our results of operations:

- Our ability to further penetrate markets with our existing products;
- Our ability to introduce new products and product lines that complement our core business;
- Decreasing interest in some tobacco products among consumers;
- Price sensitivity in our end-markets;
- Marketing and promotional initiatives, which cause variability in our results;
- General economic conditions, including consumer access to disposable income;
- Cost and increasing regulation of promotional and advertising activities;
- Cost of complying with regulation, including the "deeming regulations";
- Counterfeit and other illegal products in our end-markets;
- Currency fluctuations;
- Our ability to identify attractive acquisition opportunities; and
- Our ability to integrate acquisitions.

Recent Developments

Senior Secured Notes and 2021 Revolving Credit Facility

On February 11, 2021, we closed a private offering (the "Offering") of $250 million aggregate principal amount of our 5.625% senior secured notes due 2026 (the "Senior Secured Notes"). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. In connection with the Offering, we also entered into a new $25 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto (the "Lenders") and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). The 2021 Revolving Credit Facility provides for a revolving line of credit of up to $25.0 million. We used a portion of the proceeds from the issuance of the Senior Secured Notes to prepay all outstanding amounts under and terminate the 2018 First Lien Credit Facility in the first quarter 2021 in the amount of $130.0 million, and the transaction resulted in a $5.7 million loss on extinguishment of debt. Refer to the "Long-Term Debt" section for a more complete description of our Senior Secured Notes and 2021 Revolving Credit Facility.

Docklight Brands, Inc.

On April 19, 2020, we invested $8.7 million in Docklight Brands, Inc., a pioneering consumer products company with celebrated brands including *Marley Natural*® cannabis and *Marley*™ CBD. We have additional follow-on investment rights. As part of the investment, we have obtained exclusive U.S. distribution rights for Docklight's *Marley*™ CBD topical products.

COVID-19 Impact

As a result of the extraordinary situation we are facing, our focus is on the safety and well-being of our colleagues and the communities and customers we serve. As an organization, we have implemented several changes to enhance safety and mitigate health risk in our work environment. For our warehouse and manufacturing operations, these include split shifts, temperature scans, additional contactless hand sanitizing stations, protective equipment, social distancing guidelines, and increased cleaning and sanitization. These changes resulted in higher operational costs related to maintaining a safer work environment and fulfilling orders.

We canceled all unnecessary travel and facilitated telecommuting where possible. Like many companies, we have changed the way we communicate through increased use of videoconferencing and have implemented tele-selling initiatives through our sales force. Some of these changes that are proving to be efficient are likely to remain in-place even after this crisis and lead to on-going cost savings. We have also put a hold on new spending commitments as we cautiously manage through this environment.

We hired additional employees in our Louisville facility and implemented temporary wage increases for our hourly employees to meet increased demand. We shifted production capacity to manufacture hand sanitizers and have donated bottles to hospitals, nursing homes and first responders in our local communities.

COVID-19 may impact our results. Our third-party cigar wrap manufacturer in the Dominican Republic was temporarily shut down. Our supply chain has remained operational otherwise. Select budgeted annual price increases will be delayed. Our B2C platforms have seen elevated sales levels from consumer shifts to online purchasing, and we gained market share. We continue to monitor this challenging environment closely and will make necessary adjustments as needed to make sure we are serving our employees and customers, while also protecting the safety of employees and communities.

Premarket Tobacco Applications

We submitted Premarket Tobacco Applications ("PMTAs") covering 250 products to the FDA prior to the September 9, 2020 filing deadline. The PMTAs cover a broad assortment of products in the vapor category including multiple proprietary e-liquid offerings in varying nicotine strengths, technologies and sizes; proprietary replacement parts and components of open system tank devices through partnerships with two leading manufacturers for exclusive distribution of products in the United States; and a closed system e-cigarette.

Critical Accounting Policies and Uses of Estimates

Inventories

Inventories are stated at the lower of cost or net realizable value. Effective January 1, 2021, the Company changed its method of accounting for inventory using the last-in, first-out ("LIFO") method to the first-in, first-out ("FIFO") method. The Company applied this change retrospectively to all prior periods presented, which is discussed further in Note 6, "Inventories" in the Notes to the Consolidated Financial Statements included in this Quarterly Report. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing.

There have been no other material changes to our critical accounting policies and estimates from the information provided in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our 2020 Annual Report on Form 10-K.

Recent Accounting Pronouncements

Refer to Note 2, "Summary of Significant Accounting Policies," of Notes to Consolidated Financial Statements included in this Quarterly Report for a description of recently issued accounting pronouncements, including those recently adopted.

Results of Operations

Comparison of the Three Months Ended March 31, 2021, to the Three Months Ended March 31, 2020

The table and discussion set forth below displays our consolidated results of operations (in thousands):

	Three Months Ended March 31,		
	2021	2020	% Change
Consolidated Results of Operations Data:			
Net sales			
Zig-Zag products	$ 41,004	$ 28,914	41.8%
Stoker's products	29,255	26,495	10.4%
NewGen products	37,382	35,280	6.0%
Total net sales	107,641	90,689	18.7%
Cost of sales	54,380	49,258	10.4%
Gross profit			
Zig-Zag products	24,896	16,132	54.3%
Stoker's products	15,892	13,874	14.5%
NewGen products	12,473	11,425	9.2%
Total gross profit	53,261	41,431	28.6%
Selling, general, and administrative expenses	28,912	32,394	-10.7%
Operating income	24,349	9,037	169.4%
Interest expense, net	4,486	3,309	35.6%
Investment income	(25)	(91)	-72.5%
Loss on extinguishment of debt	5,706	-	NM
Net periodic income, excluding service cost	-	(87)	-100.0%
Income before income taxes	14,182	5,906	140.1%
Income tax expense	2,654	1,407	88.6%
Consolidated net income	11,528	4,499	156.2%
Net loss attributable to non-controlling interest	(255)	-	
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499	

Net Sales: For the three months ended March 31, 2021, consolidated net sales increased to $107.6 million from $90.7 million for the three months ended March 31, 2020, an increase of $17.0 million or 18.7%. The increase in net sales was driven by increased sales volume across all segments, primarily in the Zig-Zag Products segment.

For the three months ended March 31, 2021, net sales in the Zig-Zag Products segment increased to $41.0 million from $28.9 million for the three months ended March 31, 2020, an increase of $12.1 million or 41.8%. For the three months ended March 31, 2021, volume increased 36.9% and price/mix increased 5.0%. The increase in net sales was primarily related to double-digit growth in US rolling papers, MYO cigar wraps and Canadian papers.

For the three months ended March 31, 2021, net sales in the Stoker's Products segment increased to $29.3 million from $26.5 million for the three months ended March 31, 2020, an increase of $2.8 million or 10.4%. For the three months ended March 31, 2021, volume increased 5.1% and price/mix increased 5.3%. The increase in net sales was driven by the continuing double-digit volume growth of *Stoker's*® MST and low single-digit growth of loose-leaf chewing tobacco.

For the three months ended March 31, 2021, net sales in the NewGen products segment increased to $37.4 million from $35.3 million for the three months ended March 31, 2020, an increase of $2.1 million or 6.0%. The increase in net sales was primarily the result of growth in both the vape distribution businesses and Nu-X.

Gross Profit: For the three months ended March 31, 2021, consolidated gross profit increased to $53.3 million from $41.4 million for the three months ended March 31, 2020, an increase of $11.8 million or 28.6%. Gross profit as a percentage of revenue increased to 49.5% for the three months ended March 31, 2021, compared to 45.7% for the three months ended March 31, 2020 driven by increased margin in the Zig-Zag Products segment as a result of the Durfort transaction.

For the three months ended March 31, 2021, gross profit in the Zig-Zag Products segment increased to $24.9 million from $16.1 million for the three months ended March 31, 2020, an increase of $8.8 million or 54.3%. Gross profit as a percentage of net sales increased to 60.7% of net sales for the three months ended March 31, 2021, from 55.8% of net sales for the three months ended March 31, 2020, as a result of increased MYO cigar wraps sales combined with margin increases as a result of the Durfort transaction.

For the three months ended March 31, 2021, gross profit in the Stoker's Products segment increased to $15.9 million from $13.9 million for the three months ended March 31, 2020, an increase of $2.0 million or 14.5%. Gross profit as a percentage of net sales increased to 54.3% of net sales for the three months ended March 31, 2021, from 52.4% of net sales for the three months ended March 31, 2020, primarily as a result of strong incremental margin contribution of MST.

For the three months ended March 31, 2021, gross profit in the NewGen products segment increased to $12.5 million from $11.4 million for the three months ended March 31, 2020, an increase of $1.0 million or 9.2%. Gross profit as a percentage of net sales increased to 33.4% of net sales for the three months ended March 31, 2021, from 32.4% of net sales for the three months ended March 31, 2020.

Selling, General, and Administrative Expenses: For the three months ended March 31, 2021, selling, general, and administrative expenses decreased to $28.9 million from $32.4 million for the three months ended March 31, 2020, a decrease of $3.5 million or 10.7%. Selling, general and administrative expenses in the three months ended March 31, 2021 included $1.5 million of stock options, restricted stock and incentives expense and $0.6 million of transaction expenses. Selling, general and administrative expenses in the three months ended March 31, 2020 included $0.5 million of stock option, restricted stock and incentives expense, $1.0 million of transaction costs and $5.9 million of expense related to PMTA, which was the primary driver for the decrease in year-over-year selling, general, and administrative expenses.

Interest Expense, net: For the three months ended March 31, 2021, interest expense, net increased to $4.5 million, from $3.3 million for the three months ended March 31, 2020 as a result of the completion of the offering of the Senior Secured Notes and related refinancing of the 2018 First Lien Credit Facility which increased the Company's outstanding debt.

Investment Income: For the three months ended March 31, 2021, investment income decreased to $0.0 million, from $0.1 million for the three months ended March 31, 2020.

Loss on Extinguishment of Debt: There was $5.7 million loss on extinguishment of debt for the three months ended March 31, 2021 related to the repayment of the 2018 First Lien Credit Facility, compared to $0.0 million for the three months ended March 31, 2020.

Net Periodic Income: Net periodic income was $0.0 million for the three months ended March 31, 2021 compared to $0.1 million for the three months ended March 31, 2020.

Income Tax Expense: Our income tax expense of $2.7 million was 18.7% of income before income taxes for the three months ended March 31, 2021 and included a discrete tax benefit of $3.3 million relating to stock option exercises. Our effective income tax rate was 23.8% for the three months ended March 31, 2020 and included a discrete tax deduction $0.7 million relating to stock option exercises.

Net Loss Attributable to Non-Controlling Interest: Net loss attributable to non-controlling interest was $0.3 million for the three months ended March 31, 2021 compared to $0.0 million for the three months ended March 31, 2020.

Consolidated Net Income: Due to the factors described above, consolidated net income for the three months ended March 31, 2021 and 2020, was $11.8 million and $4.5 million, respectively.

EBITDA and Adjusted EBITDA

To supplement our financial information presented in accordance with generally accepted accounting principles in the United States, or U.S. GAAP, we use non-U.S. GAAP financial measures including EBITDA and Adjusted EBITDA. We believe Adjusted EBITDA provides useful information to management and investors regarding certain financial and business trends relating to our financial condition and results of operations. Adjusted EBITDA is used by management to compare our performance to that of prior periods for trend analyses and planning purposes and is presented to our Board of Directors. We believe that EBITDA and Adjusted EBITDA are appropriate measures of operating performance because they eliminate the impact of expenses that do not relate to operating performance. In addition, our Revolving Credit Agreement contains financial covenants which use Adjusted EBITDA calculations, and many of the carve-outs from the negative covenants in the Senior Secured Notes Indenture and Revolving Credit Facility are based off of EBITDA, Adjusted EBITDA and related metrics.

We define “EBITDA” as net income before interest expense, loss on extinguishment of debt, provision for income taxes, depreciation, and amortization. We define “Adjusted EBITDA” as net income before interest expense, loss on extinguishment of debt, provision for income taxes, depreciation, amortization, other non-cash items, and other items we do not consider ordinary course in our evaluation of ongoing operating performance noted in the reconciliation below.

Non-U.S. GAAP measures should not be considered a substitute for, or superior to, financial measures calculated in accordance with U.S. GAAP. Adjusted EBITDA excludes significant expenses required to be recorded in our financial statements by U.S. GAAP and is subject to inherent limitations. Other companies in our industry may calculate this non-U.S. GAAP measure differently than we do or may not calculate it at all, limiting its usefulness as a comparative measure. The tables below provide reconciliations between net income and Adjusted EBITDA.

(in thousands)	Three Months Ended March 31, 2021	Three Months Ended March 31, 2020
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499
Add:		
Interest expense, net	4,486	3,309
Loss on extinguishment of debt	5,706	-
Income tax expense	2,654	1,407
Depreciation expense	788	851
Amortization expense	477	425
EBITDA	$ 25,894	$ 10,491
Components of Adjusted EBITDA		
Other (a)	-	(87)
Stock options, restricted stock, and incentives expense (b)	1,498	455
Transactional expenses (c)	607	1,049
FDA PMTA (d)	-	5,874
Adjusted EBITDA	$ 27,999	$ 17,782

(a) Represents non-cash pension expense (income) and foreign exchange hedging.
(b) Represents non-cash stock options, restricted stock, incentives expense and Solace performance stock units.
(c) Represents the fees incurred for transaction expenses.
(d) Represents costs associated with applications related to FDA premarket tobacco product application ("PMTA").

Liquidity and Capital Reserves

Our principal uses for cash are working capital, debt service, and capital expenditures. We believe our cash on hand, cash flows from operations and borrowing availability under our 2021 Revolving Credit Facility are adequate to satisfy our operating cash requirements for the foreseeable future. As of March 31, 2021, we had $167.4 million of cash on hand and have $21.4 million of availability under the 2021 Revolving Credit Facility.

Our working capital, which we define as current assets less cash and current liabilities, increased $3.6 million to $68.6 million at March 31, 2021, compared with $65.0 million at December 31, 2020. The increase was primarily due to the decrease in the current portion of long-term debt.

(in thousands)	As of March 31, 2021	As of December 31, 2020
Current assets	$ 129,823	$ 121,638
Current liabilities	61,216	56,629
Working capital	$ 68,607	$ 65,009

Cash Flows from Operating Activities

For the three months ended March 31, 2021, net cash provided by operating activities was $24.2 million compared to net cash provided by operating activities of $14.7 million for the three months ended March 31, 2020, an increase of $9.5 million, primarily due to higher net income resulting from increased sales.

Cash Flows from Investing Activities

For the three months ended March 31, 2021, net cash used in investing activities was $15.8 million compared to net cash used in investing activities of $0.9 million for the three months ended March 31, 2020, an increase of $14.9 million, primarily due to the purchase of investments in our MSA escrow account which reflects the change in restricted cash.

Cash Flows from Financing Activities

For the three months ended March 31, 2021, net cash provided by financing activities was $102.1 million compared to net cash used in financing activities of $9.7 million for the three months ended March 31, 2020, an increase in cash flow of $111.8 million, primarily due to the net proceeds from the Senior Secured Notes partially offset by the repayment in full of the 2018 First Lien Term Loan in the first quarter of 2021.

Dividends and Share Repurchase

The most recent dividend of $0.055 per common share was paid on April 9, 2021, to shareholders of record at the close of business on March 19, 2021.

On February 25, 2020, our Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The program is subject to the ongoing discretion of the Board. The total number of shares repurchased for the three months ended March 31, 2021, was 119,031 shares for a total cost of $5.7 million and an average price per share of $48.16. $34.1 million remains available for share repurchases under the program at March 31, 2021.

Long-Term Debt

As of March 31, 2021, we were in compliance with the financial and restrictive covenants of the Senior Secured Notes and 2021 Revolving Credit Facility. The following table provides outstanding balances of our debt instruments.

	March 31, 2021	December 31, 2020
Senior Secured Notes	$ 250,000	$ -
2018 First Lien Term Loan	-	130,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	10,000
Note payable - Unsecured Loan	7,485	7,485
Gross notes payable and long-term debt	439,985	319,985
Less deferred finance charges	(10,183)	(5,873)
Less current maturities	(5,000)	(12,000)
Notes payable and long-term debt	$ 424,802	$ 302,112

Senior Secured Notes

On February 11, 2021, we closed a private offering (the “Offering”) of $250 million aggregate principal amount of our 5.625% senior secured notes due 2026 (the “Senior Secured Notes”). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. Interest on the Senior Secured Notes is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on August 15, 2021.We used the proceeds from the Offering (i) to repay all obligations under and terminate the 2018 First Lien Credit Facility, (ii) to pay related fees, costs, and expenses and (iii) for general corporate purposes.

Obligations under the Senior Secured Notes are guaranteed by the Company’s existing and future wholly-owned domestic subsidiaries (the “Guarantors”) that guarantee any Credit Facility (as defined in the Indenture governing the Senior Secured Notes or the “Senior Secured Notes Indenture”) or capital markets debt securities of the Company or Guarantors in excess of $15.0 million. The Senior Secured Notes and the related guarantees are secured by first-priority liens on substantially all of the assets of the Company and the Guarantors, subject to certain exceptions.

We may redeem the Senior Secured Notes, in whole or in part, at any time prior to February 15, 2023, at a price equal to 100% of the principal amount of the Notes redeemed plus accrued and unpaid interest, if any, to, but excluding the applicable redemption date, plus a “make-whole” premium. Thereafter, we may redeem the Senior Secured Notes, in whole or in part, at established redemption prices set forth in the Senior Secured Notes Indenture, plus accrued and unpaid interest, if any. In addition, on or prior to February 15, 2023,

we may redeem up to 40% of the aggregate principal amount of the Senior Secured Notes with the net cash proceeds from certain equity offerings at a redemption price equal to 105.625%, plus accrued and unpaid interest, if any to the redemption date; provided, however, that at least 50% of the original aggregate principal amount of the Senior Secured Notes (calculated after giving effect to the issuance of any additional notes) remains outstanding. In addition, at any time and from time to time prior to February 15, 2023, but not more than once in any twelve-month period, we may redeem up to 10% of the aggregate principal amount of the Senior Secured Notes at a redemption price of 103% of the aggregate principal amount of Senior Secured Notes redeemed plus accrued and unpaid interest, if any to but not including the redemption date, on the Senior Secured Notes to be redeemed.

If we experience a change of control (as defined in the Senior Secured Notes Indenture), we must offer to repurchase the Senior Secured Notes at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest.

The Indenture contains covenants that, among other things, restrict the ability of the Company and its restricted subsidiaries to: (i) grant or incur liens; (ii) incur, assume or guarantee additional indebtedness; (iii) sell or otherwise dispose of assets, including capital stock of subsidiaries; (iv) make certain investments; (v) pay dividends, make distributions or redeem or repurchase capital stock; (vi) engage in certain transactions with affiliates; and (vii) consolidate or merge with or into, or sell substantially all of our assets to another entity. These covenants are subject to a number of limitations and exceptions set forth in the Indenture.

We incurred debt issuance costs attributable to the issuance of the Senior Secured Notes of $6.4 million which are amortized to interest expense using the effective interest method over the expected life of the Senior Secured Notes.

The Indenture provides for customary events of default.

2021 Revolving Credit Facility

In connection with the Offering, we also entered into a new $25 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto (the "Lenders") and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). The 2021 Revolving Credit Facility provides for a revolving line of credit of up to $25.0 million. Letters of credit are limited to $10 million (and are a part of, and not in addition to, the revolving line of credit). We have not drawn any borrowings under the 2021 Revolving Credit Facility but do have letters of credit of approximately $3.6 million outstanding under the facility. The 2021 Revolving Credit Facility will mature on August 11, 2025 if none of our Convertible Senior Notes are outstanding, and if any Convertible Senior Notes are outstanding, the date which is 91 days prior to the maturity date of July 15, 2024 for such Convertible Senior Notes.

Interest is payable on the 2021 Revolving Credit Facility at a fluctuating rate of interest determined by reference to the Eurodollar rate plus an applicable margin of 3.50% (with step-downs upon de-leveraging). We also have the option to borrow at a rate determined by reference to the base rate.

The obligations under the 2021 Revolving Credit Agreement are guaranteed on a joint and several basis by the Guarantors. The Company's and Guarantors' obligations under the 2021 Revolving Credit Facility are secured on a pari passu basis with the Senior Secured Notes.

The 2021 Revolving Credit Agreement contains covenants that are substantially the same as the covenants in the Senior Secured Notes Indenture. The 2021 Revolving Credit Facility also requires the maintenance of a Consolidated Leverage Ratio (as defined in the 2021 Revolving Credit Agreement) of 5.50 to 1.00 (with a step down to 5.25 to 1.00 beginning with the fiscal quarter ending March 31, 2023) at the end of each fiscal quarter when extensions of credit under the 2021 Revolving Credit Facility and certain drawn and undrawn letters of credit (excluding (a) letters of credit that have been cash collateralized and (b) letters of credit having an aggregate face amount less than $5,000,000) in the aggregate outstanding exceeds 35% of the total commitments under the 2021 Revolving Credit Facility.

We incurred debt issuance costs attributable to the issuance of the 2021 Revolving Credit Facility of $0.5 million which are amortized to interest expense using the effective interest method over the expected life of the 2021 Revolving Credit Facility.

The 2021 Revolving Credit Agreement provides for customary events of default.

2018 Credit Facility

In the first quarter 2021, we used a portion of the proceeds from the issuance of the Senior Secured Notes to prepay all outstanding amounts under and terminate the 2018 First Lien Credit Facility in the amount of $130.0 million, and the transaction resulted in a $5.7 million loss on extinguishment of debt. See Note 11, "Notes Payable and Long-Term Debt," in the Notes to Consolidated Financial Statements included in this Quarterly Report for further discussion.

Convertible Senior Notes

In July 2019 we closed an offering of $172.5 million in aggregate principal amount of our 2.50% Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes will mature on July 15, 2024, unless earlier repurchased, redeemed or converted. The Convertible Senior Notes are senior unsecured obligations.

The Convertible Senior Notes are convertible into approximately 3,205,895 shares of our voting common stock under certain circumstances prior to maturity at a conversion rate of 18.585 shares per $1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately $53.81 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. The conversion price is adjusted periodically as a result of dividends paid by the us in excess of pre-determined thresholds of $0.04 per share. Upon conversion, we may pay cash, shares of our common stock or a combination of cash and stock, as determined by us at our discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of March 31, 2021.

We early adopted ASU 2020-06 effective January 1, 2021 on a retrospective basis to all periods presented. Under ASU 2020-06, the Company will account for the Convertible Senior Notes entirely as a liability and will no longer separately account for the Convertible Senior Notes with liability and equity components. See Note 2, "Summary of Significant Accounting Policies," in the Notes to Consolidated Financial Statements included in this Quarterly Report for further discussion of the impact of the adoption of ASU 2020-06.

We incurred debt issuance costs attributable to the Convertible Senior Notes of $5.9 million which are amortized to the interest expense using the effective interest method over the expected life of the Convertible Senior Notes.

In connection with the Convertible Senior Notes offering, we entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of $53.81 per and a cap price of $82.86 per share, and are exercisable when, and if, the Convertible Senior Notes are converted. We paid $20.53 million for these capped calls at the time they were entered into and charged that amount to additional paid-in capital.

Promissory Note

On June 10, 2020, in connection with the acquisition of certain Durfort assets, we issued an unsecured subordinated promissory note ("Promissory Note") in the principal amount of $10.0 million (the "Principal Amount"), with an annual interest rate of 7.5%, payable quarterly, with the first payment due September 10, 2020. The Principal Amount is payable in two $5.0 million installments, with the first installment due 18 months after the closing date of the acquisition (June 10, 2020), and the second installment due 36 months after the closing date of the acquisition. The second installment is subject to reduction for certain amounts payable to us as a holdback.

Unsecured Loan

On April 6, 2020, the 2018 First Lien Credit Facility was amended to allow for an unsecured loan under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES"). On April 17, 2020, National Tobacco Company, L.P., a wholly-owned subsidiary of the Company, entered into a loan agreement with Regions Bank guaranteed by the Small Business Administration for a $7.5 million unsecured loan. The proceeds of the loan were received on April 27, 2020. The loan is scheduled to mature on April 17, 2022 and has a 1.00% interest rate.

Off-balance Sheet Arrangements

During the three months ended March 31, 2021, the Company did not execute any forward contracts. At March 31, 2021, the Company had forward contracts for the purchase of €13.1 million and sale of €14.3 million. The fair value of the foreign currency contracts were based on quoted market prices and resulted in an asset of $0.1 million included in Other current assets and liability of $0.0 million included in Accrued liabilities at March 31, 2021. During 2020, the Company executed various forward contracts for the purchase of €19.7 million and sale of €21.4 million with maturity dates ranging from December 2020 to November 2021. At December 31, 2020, the Company had forward contracts for the purchase of €18.0 million and sale of €19.6 million. The fair value of the foreign currency contracts are based on quoted market prices and resulted in an asset of $0.4 million included in Other current assets and liability of $0.0 million included in Accrued liabilities at December 31, 2020. The Company had interest rate swap contracts for a notional amount of $70 million at December 31, 2020. The fair values of the interest rate swap contracts are based upon quoted market prices and resulted in a liability of $3.7 million as of December 31, 2020, included in other long-term liabilities. The Company terminated the interest rate swap agreement in conjunction with the prepayment of all outstanding amounts under to the 2018 First Lien Credit Facility in the first quarter 2021 in the amount of $3.6 million, and the transaction resulted in a $5.7 million loss recorded in the loss on extinguishment of debt. See Note 11, “Notes Payable and Long-Term Debt,” in the Notes to Consolidated Financial Statements included in this Quarterly Report for further discussion.

Inflation

We believe that any effect of inflation at current levels will be minimal. Historically, we have been able to increase prices at a rate equal to or greater than that of inflation and believe that we will continue to be able to do so for the foreseeable future. In addition, we have been able to maintain a relatively stable variable cost structure for our products due, in part, to our successful procurement with regard to our tobacco products and, in part, to our existing contractual agreement for the purchase of our premium cigarette papers.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Foreign Currency Sensitivity

There have been no material changes in our exposure to exchange rate fluctuation risk, as reported within our 2020 Annual Report on Form 10-K, during the period. Please refer to our ‘Quantitative and Qualitative Disclosures about Market Risk’ included in our 2020 Annual Report on Form 10-K filed with the SEC.

Credit Risk

There have been no material changes in our exposure to credit risk, as reported within our 2020 Annual Report on Form 10-K, during the three months ended March 31, 2021. Please refer to our ‘Quantitative and Qualitative Disclosures about Market Risk’ included in our 2020 Annual Report on Form 10-K filed with the SEC.

Interest Rate Sensitivity

In February 2021, we issued the Senior Secured Notes in an aggregate principal amount of $250 million. In July 2019, we issued Convertible Senior Notes in an aggregate principal amount of $172.5 million. We carry the Senior Secured Notes and Convertible Senior Notes at face value. Since the Senior Secured Notes and Convertible Senior Notes bear interest at a fixed rate, we have no financial statement risk associated with changes in interest rates. However, the fair value of the Convertible Senior Notes changes when the market price of our stock fluctuates, or interest rates change. Our remaining debt instruments bear interest at fixed rates and are not subject to interest rate volatility.

Item 4. Controls and Procedures

We have carried out an evaluation under the supervision, and with the participation of, our management including our Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and Chief Accounting Officer ("CAO"), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended (the "Act")) as of March 31, 2021. Based upon the evaluation, our CEO, CFO, and CAO concluded our disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Act is: (i) recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures.

There have been no changes in the Company's internal control over financial reporting during the fiscal quarter ended March 31, 2021 which have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

For a description of our material pending legal proceedings, please see Contingencies in Note 16 to the Notes to the Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report.

See 'Risk Factors—We may become subject to significant product liability litigation' within our 2020 Annual Report on Form 10-K for additional details.

Item 1A. Risk Factors

In addition to the other information set forth in this report, carefully consider the factors discussed in the 'Risk Factors' section contained in our 2020 Annual Report on Form 10-K. There have been no material changes to the Risk Factors set forth in the 2020 Annual Report on Form 10-K.

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

On February 25, 2020, the Company's Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. This share repurchase program has no expiration date and is subject to the ongoing discretion of the Board. All repurchases to date under our stock repurchase programs have been made through open market transactions, but in the future, we may also purchase shares through privately negotiated transactions or 10b5-1 repurchase plans.

The following table includes information regarding purchases of our common stock made by us during the quarter ended March 31, 2021 in connection with the repurchase program described above:

Period	Total Number of Shares Purchased [1]	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
January 1 to January 31	40,498	$ 44.14	40,498	38,020,412
February 1 to February 28	8,533	$ 55.98	8,533	37,542,735
March 1 to March 31	100,258	$ 49.21	70,000	34,075,635
Total	149,289		119,031	

[1] The total number of shares purchased includes (a) shares purchased under the February 2020 share repurchase program (which totaled 40,498 shares in January, 8,533 shares in February and 70,000 shares in March) and (b) shares withheld by the Company in an amount equal to the statutory withholding taxes for holders who vested in stock-based awards (which totaled 30,258 shares in March). Shares withheld by the Company to cover statutory withholdings taxes are repurchased pursuant to the applicable plan and not the authorization under the share repurchase program.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None

Item 6. Exhibits

Exhibit No.	Description
4.1	Indenture, dated as of February 11, 2021, between Turning Point Brands, Inc., certain of its subsidiaries, as guarantors, and GLAS Trust Company LLC, as trustee (including the Form of Note as Exhibit A thereto). *
10.1	Credit Agreement, dated as of February 11, 2021, by and among Turning Point Brands, Inc., as obligor, Barclays Bank PLC, as administrative agent, and the lenders party thereto. *
10.2	First Lien Pari Passu Intercreditor Agreement, dated as of February 11, 2021, by and among Turning Point Brands, Inc., and the other grantors party thereto, Barclays Bank PLC, as first lien collateral agent, and GLAS Trust Company LLC, as other collateral agent. *
10.3	Pledge and Security Agreement, dated as of February 11, 2021, by and among Turning Point Brands, Inc., as grantor, the other grantors party thereto, Barclays Bank PLC, as collateral agent, and the lenders party thereto. *
10.4	Guaranty Agreement, dated as of February 11, 2021, by and among Turning Point Brands, Inc. and certain of its subsidiaries, as guarantors, Barclays Bank PLC, as administrative agent, and the lenders party thereto. *
10.5	Pledge and Security Agreement, dated as of February 11, 2021, by and among Turning Point Brands, Inc., as grantor, the other grantors party thereto and GLAS Trust Company LLC, as collateral agent. *
18.1	Preferability letter from RMS US, LLP regarding a change in accounting method. *
31.1	Rule 13a-14(a)/15d-14(a) Certification of Lawrence S. Wexler.*
31.2	Rule 13a-14(a)/15d-14(a) Certification of Luis Reformina.*
31.3	Rule 13a-14(a)/15d-14(a) Certification of Brian Wigginton.*
32.1	Section 1350 Certifications pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*
101	XBRL (eXtensible Business Reporting Language). The following materials from Turning Point Brands, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, filed on October 27, 2020, formatted in Inline XBRL (iXBRL): (i) consolidated balance sheets, (ii) consolidated statements of income, (iii) consolidated statements of comprehensive income, (iv) consolidated statements of cash flows, and (v) the notes to consolidated financial statements.*
104	Cover Page Interactive Data File (formatted in iXBRL and included in Exhibit 101).*

* Filed or furnished herewith

Signatures

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

TURNING POINT BRANDS, INC.

By: /s/ Lawrence S. Wexler
Name: Lawrence S. Wexler
Title: President and Chief Executive Officer

By: /s/ Luis Reformina
Name: Luis Reformina
Title: Chief Financial Officer

By: /s/ Brian Wigginton
Name: Brian Wigginton
Title: Chief Accounting Officer

Date: May 5, 2021

Exhibit 4.1

Execution Version

TURNING POINT BRANDS, INC.

5.625% SENIOR SECURED NOTES DUE 2026

INDENTURE

DATED AS OF FEBRUARY 11, 2021

GLAS TRUST COMPANY LLC,
as Trustee and Notes Collateral Agent

TABLE OF CONTENTS

This Indenture, dated as of February 11, 2021 is by and among Turning Point Brands, Inc., a Delaware corporation (the "*Company*"), the Guarantors (as defined below) and GLAS Trust Company LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, as trustee (the "*Trustee*") and as notes collateral agent (in such capacity the "*Notes Collateral Agent*") pursuant to which the Company is issuing $250,000,000 aggregate principal amount of its 5.625% Senior Secured Notes due 2026 on the Issue Date (the "*Initial Notes*").

The Company, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of (i) the Initial Notes and (ii) Additional Notes (together with the Initial Notes, the "*Notes*"):

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 Definitions.

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

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized in connection with, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

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

"*Additional Notes*" means Notes (other than the Initial Notes) issued pursuant to Article II and otherwise in compliance with the provisions of this Indenture.

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

"*Agent*" means any Registrar, Paying Agent or co-registrar.

"*Applicable Calculation Date*" means the applicable date of calculation for (i) the Secured Leverage Ratio, (ii) the Consolidated Leverage Ratio, (iii) the Fixed Charge Coverage Ratio, (iv) EBITDA or (v) Consolidated Total Assets.

"*Applicable Measurement Period*" means the most recently completed four consecutive fiscal quarters of the Company immediately preceding the Applicable Calculation Date for which internal financial statements are available.

"*Applicable Procedures*" means, with respect to any matter at any time relating to a Global Note, the rules, policies and procedures of the depositary applicable to such matter.

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

(a) (i) the present value at such redemption date the redemption price at February 15, 2023 (such redemption price being set forth in Section 3.7(a)), *plus* (ii) the present value at such redemption date of all required interest payments due through February 15, 2023 (excluding accrued but unpaid interest to the applicable date of redemption), in each case computed using a discount rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(b) the then outstanding principal amount of the Notes.

The Applicable Premium will be calculated by the Company or its agent.

"*Asset Sale*" means (i) the sale, conveyance, transfer or other voluntary disposition (whether in a single transaction or a series of related transactions) of property or assets of the Company (other than the sale of Equity Interests of the Company) or any of its Restricted Subsidiaries (each referred to in this definition as a "disposition") or (ii) the issuance or sale of Equity Interests of any Restricted Subsidiary (whether in a single transaction or a series of related transactions and other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 4.9 or the issuance of directors' qualifying shares and shares issued to foreign nationals as required by applicable law), in each case, other than:

(1) a disposition of Cash Equivalents or obsolete, damaged, unnecessary, unsuitable, used or worn out property, equipment or other assets in the ordinary course of business or inventory (or other assets) held for sale in the ordinary course of business and dispositions of property no longer used or useful or economically practicable in the conduct of the business of the Company and its Restricted Subsidiaries or the disposition of inventory, goods or other assets in the ordinary course of business or no longer useful in the ordinary course of the Company's business;

(2) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to Article V or any disposition that constitutes a Change of Control;

(3) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, pursuant to Section 4.7 or the granting of a Lien permitted by Section 4.12;

(4) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of related transactions with an aggregate fair market value of less than $15.0 million;

(5) any disposition of property or assets, or issuance of securities by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to another Restricted Subsidiary;

(6) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with past practice or that does not materially interfere with the business of the Company as then in effect;

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

(8) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating Net Proceeds of any Asset Sale) dispositions necessary or advisable (as determined in good faith by the Company) in order to consummate any acquisition of any Person, business or assets;

(9) disposition of an account receivable in connection with the collection or compromise thereof;

(10) foreclosures, condemnation, expropriation, forced dispositions, eminent domain or any similar action (whether by deed of condemnation or otherwise) with respect to assets or the granting of Liens not prohibited by this Indenture, and transfers of any property that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement or upon receipt of the net proceeds of such casualty event the granting of Liens not prohibited by this Indenture;

(11) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business;

(12) any exchange of assets for Permitted Business Assets (including a combination of Permitted Business Assets and a de minimis amount of Cash Equivalents) of comparable or greater market value, as determined in good faith by the Company;

(13) the licensing, sublicensing or cross-licensing of intellectual property or other general intangibles;

(14) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Company or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(15) dispositions of Investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements or rights of first refusal between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

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

(17) the disposition of any assets (including Equity Interests of a Restricted Subsidiary) (i) acquired after the Issue Date in a transaction permitted under this Indenture, which assets are not used or useful in the core or principal business of the Company and its Restricted Subsidiaries, or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Company to consummate any acquisition permitted under this Indenture;

(18) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(19) any sale and lease-back transaction in an amount not to exceed $25.0 million;

(20) 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;

(21) the unwinding or voluntary termination of any Hedging Obligations;

(22) any disposition in connection with the Transactions; and

(23) the sale, transfer or other disposition of any assets in the TMSA Account.

For the avoidance of doubt, none of (v) the unwinding of Hedging Obligations, (w) the issuance or sale of any Permitted Convertible Indebtedness by the Company or any of its Subsidiaries, (x) the sale of any Permitted Warrant Transaction by the Company, (y) the purchase of any Permitted Bond Hedge Transaction nor (z) the performance by the Company and/or any Subsidiary thereof of the Company's or such Subsidiary's obligations under any Permitted Convertible Indebtedness, any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction or any termination of any such transaction, shall constitute, or be deemed to constitute, an Asset Sale.

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Sale and would also be a permitted Restricted Payment or Permitted Investment, the Company, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Asset Sale and/or one or more of the types of permitted Restricted Payments or Permitted Investments.

"*Asset Sale Offer*" means an Offer to Purchase required to be made by the Company pursuant to Section 4.10 to all Holders.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal, state or foreign law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "*Beneficially Owns,*" "*Beneficially Owned*" and "*Beneficial Ownership*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the Board of Directors of the corporation;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership; and

(3) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Board Resolution*" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or any duly authorized committee thereof, unless the context specifically requires that such resolution be adopted by a majority of the disinterested members of the Board of Directors, in which case by a majority of such directors, and to be in full force and effect on the date of such certification and delivered to the Trustee.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to remain closed.

"*Capital Stock*" means:

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

(2) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Capitalized Lease Obligation*" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP (except for temporary treatment of construction-related expenditures under EITF 97-10, "The Effect of Lessee Involvement in Asset Construction," which will ultimately be treated as operating leases upon a sale-leaseback transaction); *provided, however*, that, for the avoidance of doubt, any obligations relating to a lease that would have been accounted for by the Company as an operating lease under GAAP as in existence on December 31, 2018, shall be accounted for and treated as an operating lease and not a Capitalized Lease Obligation.

"*Cares Act Loan*" means that certain unsecured, non-recourse covered loan incurred on April 6, 2020 by National Tobacco Company, L.P. under the Paycheck Protection Program.

"*Cash Contribution Amount*" means the aggregate amount of cash contributions made to the capital of the Company or any Guarantor described in the definition of "*Contribution Indebtedness.*"

"*Cash Equivalents*" means:

(1) United States dollars or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(2) securities issued or directly and fully and unconditionally guaranteed or insured by the government or any agency or instrumentality of the United States, the United Kingdom or any member state of the European Union whose legal tender is the euro having maturities of not more than 36 months from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of 36 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 36 months and overnight bank deposits, in each case, with any lender party to the New Revolving Credit Facility or with any commercial bank having capital and surplus in excess of $100 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper maturing within 36 months after the date of acquisition and having a rating of at least A-1 from Moody's or P-1 from S&P;

(6) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 12 months or less from the date of acquisition;

(7) instruments equivalent to those referred to in clauses (1) to (6) above denominated in euro or pounds sterling or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction; and

(8) investment in funds which invest substantially all of their assets in Cash Equivalents of the kinds described in clauses (1) through (7) of this definition.

"*Cash Management Obligations*" means obligations owed by either the Company or any Restricted Subsidiary to any other Person in respect of or in connection with Cash Management Services.

"*Cash Management Services*" means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called "procurement card" or "P-card"), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds and obligations in respect of any other services related, ancillary or complementary to the foregoing.

"*Certificated Notes*" means Notes that are in the form of Exhibit A attached hereto other than Global Notes.

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

(1) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, to any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) other than to the Company or its Subsidiaries or a Permitted Holder; or

(2) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group other than a Permitted Holder (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Company, in each case, other than an acquisition where the holders of the Voting Stock of the Company as of immediately prior to such acquisition hold 50% or more of the Voting Stock of the ultimate parent of the Company or successor thereto immediately after such acquisition (provided no holder of the Voting Stock of the Company as of immediately prior to such acquisition owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of the Company immediately after such acquisition).

Notwithstanding the preceding or any provision of Rule 13(d)(3) of the Exchange Act (or any successor provision), (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement and (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person (the "Subject Person") held by a parent of such Subject Person unless it owns more than 50% of the total voting power of the Voting Stock of such parent and (iii) if any group (other than a Permitted Holder) includes one more Permitted Holders, the issued and outstanding Voting Stock of the Company owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred.

"*Change of Control Offer*" means an Offer to Purchase required to be made by the Company pursuant to Section 4.14 to all Holders.

"*Clearstream*" means Clearstream Banking S.A. and any successor thereto.

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

"*Collateral*" means any and all "Collateral" or "Mortgaged Property" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Notes Collateral Agent, which will be substantially all assets of the Guarantors other than Excluded Assets.

"*Commission*" means the United States Securities and Exchange Commission.

"*Consolidated Depreciation and Amortization Expense*" means, with respect to any Person for any period, the total amount of depreciation and amortization charge or expense, including without limitation the amortization of capitalized software expenses, deferred financing fees, debt issuance costs, fees, commissions and other expenses related thereto and other noncash charges (excluding any noncash item that represents an accrual or reserve for a cash expenditure for a future period) of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, the sum, without duplication, of: (a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period (including amortization of original issue discount, noncash interest payments (other than imputed interest as a result of purchase accounting), commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, the interest component of Capitalized Lease Obligations, net payments (if any) pursuant to interest rate Hedging Obligations (any net receipts pursuant to such interest rate Hedging Obligations shall be included as a reduction to Consolidated Interest Expense), amortization of deferred financing fees or expensing of any bridge or other financing fees and any loss on the early extinguishment of Indebtedness and amortization of any original issue discount in connection with the Transactions) *plus* (b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, *less* (c) interest income of such Person and its Restricted Subsidiaries actually received or receivable in cash for such period.

"*Consolidated Leverage Ratio*" means, with respect to and Person, as of any date, means the ratio of (a) Consolidated Total Debt minus unrestricted cash and Cash Equivalents of such Person and its Restricted Subsidiaries, in each case, computed as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date to (b) EBITDA for the four full fiscal quarters for which internal financial statements prepared in accordance with GAAP are available immediately preceding the date. In the event that the Company or any of its Restricted Subsidiaries incurs or redeems any Indebtedness subsequent to the commencement of the period for which the Consolidated Leverage Ratio is being calculated but prior to the event for which the calculation of the Consolidated Leverage Ratio is made, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four fiscal quarter period. The Consolidated Leverage Ratio shall be calculated in a manner consistent with the definition of "Fixed Charge Coverage Ratio," including with respect to any *pro forma* calculations.

"*Consolidated Net Income*" means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided*, *however*, that:

(1) any net after-tax extraordinary, unusual or nonrecurring gains, losses, income, costs, charges or expenses (including, without limitation, restructuring, severance, relocation, consolidation, transition, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, new product launches, unrealized losses on the TMSA Account, and any fees, expenses or charges related to the Transactions or otherwise (including any transition-related expenses incurred before, on or after the Issue Date), and litigation settlements or losses) shall be excluded;

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principle(s) during such period;

(3) costs associated with, and any net after-tax gains or losses attributable to asset dispositions or abandonments other than in the ordinary course of business (as determined in good faith by the Board of Directors of the Company) and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person shall be excluded;

(4) the Net Income for such period of any Person that is not a Restricted Subsidiary of such Person, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that, to the extent not already included, Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or payments that are actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof in respect of such period (subject in the case of dividends paid or distributions made to a Restricted Subsidiary (other than a Guarantor) to the limitations contained in clause (5) below);

(5) solely for the purpose of determining the amount available for Restricted Payments that are permitted to be made under Section 4.7, the Net Income for such period of any Restricted Subsidiary (other than a Guarantor) shall be excluded if the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not wholly permitted at the date of determination without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived and other than restrictions pursuant to this Indenture, the Security Documents or the New Revolving Credit Facility and related documentation; *provided* that the Consolidated Net Income of such Person shall be, after giving effect to any applicable exclusion contained in clause (7) of the definition of "*EBITDA,*" increased by the amount of dividends or similar distributions that are actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof (subject to the provisions of this clause (5) in respect of such period, to the extent not already included therein);

(6) non-cash compensation charges, including any such charges arising from stock options, restricted stock grants or other equity-incentive programs and accruals for bonuses payable in a future period (*provided* that the amount paid in respect of such bonuses shall be included in the period paid) and income (loss) attributable to deferred compensation shall be excluded;

(7) any net after-tax gains or losses and all fees and expenses or charges relating thereto attributable to the early extinguishment of Indebtedness or Hedging Obligations shall be excluded;

(8) the effect of any non-cash items resulting from any amortization, impairment, write-up, write-down or write-off of assets (including investment securities) (including intangible assets, goodwill and deferred financing costs in connection with the Transactions or any future acquisition, disposition, merger, consolidation, Investment or similar transaction or any other non-cash impairment charges) incurred subsequent to the Issue Date resulting from the application at SFAS Nos. 141, 142 or 144 (excluding any such non-cash item to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such item is subsequently reversed) shall be excluded;

(9) any unrealized net gain or loss resulting from Hedging Obligations permitted by clause (9) of the definition of "*Permitted Debt*" (including pursuant to the application of SFAS No. 133) shall be excluded;

(10) any net after-tax income or loss from discontinued operations and any net after-tax gains or losses on disposal of discontinued operations shall be excluded;

(11) expenses and lost profits with respect to liability or casualty events or business interruption shall be disregarded (x) to the extent covered by insurance and actually reimbursed or (y) if such Person has made a determination that there exists reasonable evidence that such amount will be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the insurer in writing and (b) is in fact reimbursed within 365 days following the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period); *provided*, that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (11);

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

(13) [reserved];

(14) non-cash charges for deferred tax asset valuation allowances shall be excluded;

(15) any fees, expenses (including any transaction or retention bonus or similar payment) or charges incurred during such period, or any amortization thereof for such period, in connection with the Transactions or any acquisition, non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investment, recapitalization, asset disposition, non-competition agreement, issuance, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of or waiver or consent relating to any debt instrument, shall be excluded.

(16) any net pension costs or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) and any other non-cash items of a similar nature shall be excluded; and

(17) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures (provided, in each case, that the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Income for the period in which such cash payment was made) shall be excluded.

In addition, to the extent not already included in Consolidated Net Income, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance or reimbursement of expenses and charges that are covered by indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Indenture.

"*Consolidated Total Assets*" means the total consolidated assets of the Company and its Restricted Subsidiaries as shown on the most recent balance sheet determined in accordance with GAAP determined on a *pro forma* basis in a manner consistent with the *pro forma* adjustments contained in the definition of Fixed Charge Coverage Ratio.

"*Consolidated Total Debt*" means, with respect to any Person as of any date of determination, the sum, without duplication, of (i) the total amount of Indebtedness of such Person and its Restricted Subsidiaries, *plus* (ii) the total amount of Indebtedness of any other Person, to the extent that such Indebtedness has been Guaranteed by the referent Person or one or more of its Restricted Subsidiaries, *plus* (iii) the aggregate liquidation value of all Disqualified Stock of such Person and all preferred stock of Restricted Subsidiaries of such Person, in each case, determined on a consolidated basis in accordance with GAAP.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Contribution Indebtedness*" means Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount not greater than the aggregate amount of cash contributions (other than Excluded Contributions and Refunding Capital Stock) made to the capital of the Company or such Guarantor after the Issue Date.

"*Convertible Senior Notes*" means the Company's 2.50% Convertible Senior Notes due 2024.

"*COVID-19 Relief Funds*" means funds or credit or other support received by the Company or any Subsidiary of the Company from, or with the credit or other support of, any governmental authority, and incurred with the intent to mitigate through liquidity or other financial relief the impact of the COVID-19 global pandemic on the business and operations of the Company and its Subsidiaries.

"*Corporate Trust Office of the Trustee*" means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office as of the date hereof is located at 3 Second Street, Suite 206, Jersey City, NJ 07311, Attention: Transaction Management Group, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by written notice to the Holders and the Company).

"*Credit Facilities*" means, with respect to the Company or any of its Restricted Subsidiaries, one or more debt facilities, including the New Revolving Credit Facility, or other financing arrangements (including, without limitation, commercial paper facilities with banks or other institutional lenders or investors or indentures) providing for revolving credit loans, term loans, letters of credit or other indebtedness, including any notes (including Additional Notes), mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund, refinance, extend, renew, restate, amend, supplement or modify any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchanged, replacement, refunding, refinancing, extended, renewed, restated, amended, supplemented or modified facility or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such increase in borrowings or issuance is permitted under Section 4.9) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or other holders or investors.

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

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

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 as the Depositary with respect to the Notes, until a successor shall have been appointed and become such pursuant to Section 2.6, and, thereafter, "*Depositary*" shall mean or include such successor.

"*Designated Noncash Consideration*" means the fair market value of noncash consideration received by the Company or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Noncash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Noncash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in exchange for consideration in the form of cash or Cash Equivalents in compliance with Section 4.10.

"*Designated Preferred Stock*" means Preferred Stock of the Company, any Restricted Subsidiary or any parent entity (in each case other than Disqualified Stock) that is issued after the Issue Date for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Company or the applicable Parent Entity, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of the first paragraph of Section 4.7.

"*Disinterested Directors*" means with respect to any Affiliate Transaction, a member of the Board of Directors of the Company having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors of the Company shall be deemed not to have such a financial interest by reason of such member's holding Equity Interests or similar rights in the Company.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is putable or exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable (other than as a result of a Change of Control or Asset Sale if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is putable or exchangeable) provide that such Person may not redeem or repurchase any such Capital Stock (and all securities into which it is convertible or for which it is putable or exchangeable) pursuant to such provision prior to compliance by such Person with the provisions of Section 4.10 or 4.14 and such repurchase or redemption complies with Section 4.7), in each case, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than as a result of a Change of Control or Asset Sale), in whole or in part, or (c) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary), in each case prior to the date 91 days after the earlier of the final maturity date of the Notes and the date the Notes are no longer outstanding; *provided*, *however*, that (i) any Capital Stock held by any future, current or former employee, director, officer, manager, independent contractor or consultant of the Company, any of its Subsidiaries, any of their direct or indirect parent companies or any other entity in which the Company or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Company or a Restricted Subsidiary, in each case pursuant to any stock subscription or shareholders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries or in order to satisfy applicable statutory or regulatory obligations, (ii) only the portion of such Capital Stock that so matures or is mandatorily redeemable, is so redeemable at the option of the holder thereof prior to such date, or is so convertible or exchangeable will be deemed to constitute Disqualified Stock, and (iii) any class of such Capital Stock that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock of the Company or any of its direct or indirect parent entities that is not Disqualified Stock will not be deemed to constitute Disqualified Stock.

"*Domestic Subsidiary*" means any direct or indirect Subsidiary of the Company that was formed under the laws of the United States, any state of the United States or the District of Columbia.

"*DTC*" means The Depository Trust Company and any successor.

"*Durfort Promissory Note*" means the promissory note in the principal amount of $10.0 million issued on June 10, 2020, in connection with the acquisition of certain assets of Durfort Holdings S.R.L. and Blunt Wrap USA.

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

(1) Taxes paid and the provision for any type of taxes, of such Person for such period deducted in computing Consolidated Net Income; *plus*

(2) Consolidated Interest Expense of such Person for such period to the extent the same was deducted in calculating such Consolidated Net Income; *plus*

(3) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent such depreciation, amortization and non-cash charges were deducted in computing Consolidated Net Income; *plus*

(4) any extraordinary, unusual, infrequently occurring or nonrecurring loss, charge, payments or expense or any losses, expenses, payments or charges incurred in connection with any Equity Offering, Permitted Investment, Restricted Payment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred under this Indenture (in each case whether or not consummated and including expenses incurred in connection with the offering of the Notes and the entry into the New Revolving Credit Facility), COVID-19 or the Transactions and, in each case, deducted in such period in computing Consolidated Net Income; *plus*

(5) the amount of any restructuring charges, accruals or reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment cost, excess pension charges, contract termination costs, future lease commitments, integration and business optimization costs and costs to close or consolidate facilities and relocate employees) deducted in such period in computing Consolidated Net Income; *plus* or *minus*

(6) any other noncash charges, expenses, write-down or losses (including any impairment charges and the impact of purchase accounting, including, but not limited to, the amortization of inventory step-up and loss of profit on the acquired inventory and unrealized losses of the TMSA Account) or deferred cash charges, expenses or losses reducing Consolidated Net Income for such period (excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, other than straight-line rent expense determined in accordance with GAAP to the extent such accruals exceed the related rent payments for the applicable period; *provided*, *however*, that the EBITDA for any period shall be reduced to the extent rent payments exceed rent accruals for such period irrespective of the accounting treatment of such rent payments) *less* all non-cash items of income of such Person and its Restricted Subsidiaries; *plus*

(7) taxes paid during the period in respect of deferred tax obligations stemming from CARES ACT relief originally due but deferred from periods prior to the Issue Date; *plus*

(8) the amount of any non-controlling interest expense consisting of income attributable to non-controlling interests of third parties in any non-Wholly Owned Subsidiary; *plus*

(9) (a) costs incurred or otherwise associated with the launch of new products or product lines and (b) costs associated with applications related to Food and Drug Administration Pre-market Tobacco Applications and similar costs incurred in connection with the receipt of regulatory approval for products;

(10) corporate and vapor restructuring expenses including severance and inventory reserves; and

(11) the amount of "run rate" cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies related to the Transactions, any Specified Transaction, any restructuring, cost saving initiative or other initiative projected by the Company in good faith to be realized as a result of actions taken, committed to be taken or planned to be taken, in each case on or prior to the date that is 18 months after the end of the relevant period (including actions initiated prior to the Issue Date) (which cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies shall be added to EBITDA until fully realized and calculated on a *pro forma* basis as though such cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; *provided* that (A) such cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies are reasonably identifiable and quantifiable and (B) no cost savings, operating expense reductions, other operating improvements, revenue enhancements or synergies shall be added pursuant to this clause (a) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions, other operating improvements, revenue enhancements or synergies that are included in any other "*pro forma*" (it being understood and agreed that "run rate" shall mean the full recurring benefit that is associated with any action taken); provided, further, that the aggregate amount of "run rate" cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies related to any Specified Transaction, any restructuring, cost saving initiative or other initiative added pursuant to this clause (a) shall not exceed 25% of EBITDA (calculated after giving effect to any addback under this clause for any Applicable Measurement Period); *plus* or *minus*

(12) noncash items increasing Consolidated Net Income of such Person for such period (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges made in any prior period) or which will result in the receipt of cash in a future period or the amortization of lease incentives.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock); *provided*, for the avoidance of doubt, that no Permitted Convertible Indebtedness, other debt securities that are or by their terms may be convertible or exchangeable into or for Equity Interests (other than Disqualified Stock) or into or for any combination of cash and Equity Interests (other than Disqualified Stock) by reference to the price of such Equity Interests) or Permitted Convertible Indebtedness Call Transactions, in each case, shall constitute Equity Interests of the Company or any of its Subsidiaries prior to settlement, conversion, exchange or exercise thereof.

"*Equity Offering*" means any public or private sale of common or preferred stock (other than Disqualified Stock) of the Company or common stock or Preferred Stock of any of its direct or indirect parent entities (excluding Disqualified Stock of such entity), other than (1) public offerings with respect to common stock of the Company or of any of its direct or indirect parent entities registered on Form S-4 or Form S-8, (2) any such public or private sale that constitutes an Excluded Contribution or (3) an issuance to any Subsidiary of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Excluded Assets*" means:

(1) (a) each fee-owned real property with a fair market value of less than $5,000,000 per property, (b) any real property located outside of the United States of America and (c) any ground leasehold or other commercial leasehold real property interests or improvements thereto or any interest therein;

(2) motor vehicles and other assets subject to certificates of title statutes (to the extent a lien thereon cannot be perfected solely by filing of a UCC financing statement);

(3) leasehold interests, letters of credit and letters of credit rights not constituting supporting obligations, in each case other than to the extent such interests,

(4) rights or obligations can be perfected by the filing of a UCC-1 financing statement or other comparable foreign filing, and commercial tort claims (other than those where no additional action is required by any Guarantor to grant or perfect a security interest in such commercial tort claim);

(5) those pledges and assets over which the granting or perfecting of security interests in such assets would be prohibited by any governmental authority or contract existing on the Issue Date or on the date any Subsidiary party to such contract is acquired (so long as, in the case of an acquisition of a Subsidiary, any such prohibition was not incurred in contemplation of such acquisition), requirement of law (or if any requirement of law creates a material risk of tax or other liability as reasonably determined by the Company) or regulation;

(6) equity interests in any Person other than Restricted Subsidiaries to the extent not permitted by the terms of such Person's organizational or joint venture documents or to the extent the pledge thereof would be prohibited by any governmental authority;

(7) any lease, license or other agreement or any property subject to a lease, license or agreement or purchase money agreement, capital lease obligation or similar arrangements to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money agreement or create a right of termination in favor of any other party thereto (other than a Guarantor) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable statute or regulation, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable statute or regulation notwithstanding such prohibition;

(8) any "intent-to-use" trademark or service mark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely 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 any registration that issues from such intent-to-use application under applicable federal law;

(9) those assets that the cost or burden of obtaining or perfecting a security interest therein are excessive in relation to the value of the security to be afforded thereby as reasonably determined by the Company and the Trustee;

(10) voting Equity Interests in any Foreign Subsidiaries or FSHCO, in each case in excess of 66% of the total combined voting power of the Equity Interests of such entities entitled to vote and 100% of the Equity Interests of such entities not entitled to vote;

(11) Equity Interests in Unrestricted Subsidiaries, Subsidiaries of Foreign Subsidiaries or FSHCOs; and

(12) Margin Stock; provided that "Excluded Assets" shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets).

"*Excluded Contribution*" means net cash proceeds or marketable securities, in each case received by the Company from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any Unrestricted Subsidiaries or joint ventures or Investments in entities that are not Restricted Subsidiaries; and

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

in each case designated as Excluded Contributions pursuant to an Officer's Certificate on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be.

"*Excluded Subsidiary*" means any (a) Subsidiary that is not a Wholly Owned Subsidiary, (b) Subsidiary that is prohibited by applicable law from providing a Guarantee, (c) Unrestricted Subsidiary, (d) direct or indirect Domestic Subsidiary of a direct or indirect Foreign Subsidiary, (e) Domestic Subsidiary substantially all of whose assets consist of capital stock (or capital stock and Indebtedness) of one or more Foreign Subsidiaries and any assets incidental thereto, (f) not- for-profit Subsidiary, (g) Subsidiary to the extent providing a Guarantee of the Notes would result in material adverse tax consequences to the Company or any Subsidiary as reasonably determined by the Company and (h) Immaterial Subsidiary.

"*fair market value*" means the fair market value, as determined in good faith by the Company using any customarily used valuation methodology, whose determination will be conclusive for all purposes under this Indenture and the Notes.

"*Fixed Charge Coverage Ratio*" means, with respect to any Person for any period consisting of such Person's most recently ended four fiscal quarters for which internal financial statements are available, the ratio of EBITDA of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, repays or otherwise retires or extinguishes any Indebtedness or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Calculation Date*"), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period and as if the Company or Restricted Subsidiary had not earned the interest income actually earned during such period in respect of such cash used to repay, repurchase, defease or otherwise discharge such Indebtedness.

If Investments, acquisitions, dispositions, mergers or consolidations have been made by the Company or any Restricted Subsidiary during the four quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Calculation Date, then the Fixed Charge Coverage Ratio shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers or consolidations (and the change in any associated Fixed Charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four quarter reference period.

If since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, merger or consolidation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro* fo*r*ma effect thereto for such period as if such Investment, acquisition, disposition, merger or consolidation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition and any component definitions, whenever *pro forma* effect is to be given to an Investment, acquisition, disposition, merger or consolidation and the amount of income or earnings relating thereto, the *pro forma* calculations shall be determined in good faith by a responsible financial or accounting Officer of the Company and may include operating expense reductions, cost savings, and synergies for such period resulting from the transaction which is being given *pro forma* effect (A) that have been realized, (B) for which the steps necessary for realization have been taken (or are taken concurrently with such transaction) or (C) for which the steps necessary for realization are reasonably expected to be taken within the twelve-month period following such transaction and, in each case, including, but not limited to, (a) reduction in personnel expenses, (b) reduction of costs related to administrative functions, (c) reduction of costs related to leased or owned properties and (d) reductions from the consolidation of operations and streamlining of corporate overhead; *provided*, that, in each case, such adjustments are based on the reasonable good faith beliefs of the Officers executing such Officer's Certificate at the time of such execution. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if the related hedge has a remaining term in excess of twelve months).

Interest on a Capitalized Lease Obligation shall be deemed to accrue at the interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on a ratio basket based on the Fixed Charge Coverage Ratio, Secured Leverage Ratio, Total Consolidated Ratio or EBITDA, such ratio(s) shall be calculated (i) without regard to the incurrence of any Indebtedness under any revolving facility or letter of credit facility immediately prior to or in connection therewith; provided that for the avoidance of doubt, the amount of any cash proceeds from such revolving facility or letter of credit facility shall also be disregarded for purposes of such calculation and (ii) with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other basket on the same date. Each item of Indebtedness that is incurred or issued, each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant Fixed Charge Coverage Ratio, Secured Net Leverage Ratio, Total Consolidated Ratio or EBITDA test.

"*Fixed Charges*" means, with respect to any Person for any period, the sum of, without duplication, (a) Consolidated Interest Expense of such Person for such period, (b) all cash dividends paid during such period (excluding items eliminated in consolidation) on any series of Preferred Stock of such Person and its Subsidiaries and (c) all cash dividends paid during such period (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person and its Subsidiaries minus interest income, non-cash interest expense attributable to movement in mark to market valuation of Hedging Obligations or other derivatives under GAAP, and any expense resulting from the discounting of Indebtedness in connection with the application of purchase accounting in connection with any acquisition.

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

"*GAAP*" means generally accepted accounting principles in the United States in effect on the Issue Date, except that with respect to any reports or financial information required to be delivered pursuant to Section 4.3, GAAP means generally accepted accounting principles in the United States as in effect during the applicable period covered by such report or financial information. Notwithstanding the foregoing, for purposes of this Indenture, GAAP shall be determined, all terms of an accounting or financial nature shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capitalized asset with a corresponding lease liability where such lease (or similar arrangement) would not have been required to be so treated under GAAP prior to the effective date of ASU No. 2016-02. For purposes of this Indenture, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries and does not include any Unrestricted Subsidiary.

If there occurs a change in generally accepted accounting principles and such change would cause a change in the method of calculation of any standards, terms or measures used in a covenant under Article IV as determined in good faith by the Company (an "*Accounting Change*"), then the Company may elect in good faith, as evidenced by a written notice of the Company to the Trustee, to amend any provision hereof, including any financial ratio calculations, thresholds or covenants, to eliminate the effect of any Accounting Change or in the application thereof occurring after the Issue Date on the operation of such provision, regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, to reflect the effects of the Accounting Change, including but not limited to amending the financial ratio calculations, thresholds and any financial covenant in this Indenture to recalibrate such financial ratio calculation, threshold and financial covenant for the effects of the Accounting Change, so long as (1) such recalibration is limited to changes in the calculation of such financial ratio calculations, thresholds or covenant levels due to the effects of differences between GAAP as in effect on the Issue Date and any change occurring after the Issue Date, (2) the recalibrated financial ratio calculations, thresholds or covenant levels shall be determined in good faith and (3) any such recalibration shall be done in a manner such that, after giving effect to such recalibration, the recalibrated thresholds and covenant levels shall be consistent with the intention of the respective thresholds and covenant levels calculated under GAAP prior to such notice.

"*Global Note Legend*" means the legend identified as such in Exhibit A.

"*Global Notes*" means the Notes that are in the form of Exhibit A issued in global form and registered in the name of the Depositary or its nominee.

"*guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness or other obligations. When used as a verb, "guarantee" shall have a corresponding meaning.

"*Guarantee*" means any guarantee of the obligations of the Company under this Indenture and the Notes by a Guarantor in accordance with Article XI. When used as a verb, "*Guarantee*" shall have a corresponding meaning.

"*Guarantor*" means any Person that incurs a Guarantee of the Notes; *provided* that upon the release and discharge of such Person from its Guarantee in accordance with Section 11.6, such Person shall cease to be a Guarantor.

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

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) other agreements or arrangements designed to manage, hedge or protect such Person with respect to fluctuations in currency exchange, interest rates or commodity prices. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

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

"*Immaterial Subsidiary*" means a Subsidiary of the Company for which the EBITDA attributable to such Subsidiary accounts for less than or equal to 5% of EBITDA of the Company and its Restricted Subsidiaries and collectively with all Immaterial Subsidiaries, less than or equal to 5% of EBITDA of the Company and its Restricted Subsidiaries.

"*Indebtedness*" means, with respect to any Person, without duplication,

(1) any indebtedness (including principal and premium) of such Person:

(A) in respect of borrowed money;

(B) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or, without duplication, reimbursement agreements in respect thereof);

(C) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations), except any such balance that constitutes an obligation to a trade creditor accrued in the ordinary course of business; or

(D) all net 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 Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a long-term liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any parent entity appearing on the balance sheet of the Company solely by reason of push-down accounting under GAAP shall be excluded;

(2) Disqualified Stock of such Person (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

(3) all guarantees by such Person of the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(4) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset (other than a Lien on Capital Stock of an Unrestricted Subsidiary) owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided* that the amount of Indebtedness of any Person for purposes of this clause (4) 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;

provided, *however*, that Indebtedness will not include:

(A) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money, documentary letters of credit issued in connection with inventory purchases in the ordinary course of business and trade payables, accrued expenses and intercompany liabilities in each case arising in the ordinary course of business;

(B) items that would appear as a liability on a balance sheet prepared in accordance with GAAP as a result of the applicability of EITF 97-10, “The Effect of Lessee Involvement in Asset Construction”;

(C) prepaid or deferred revenue arising in the ordinary course of business;

(D) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset;

(E) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP;

(F) intercompany indebtedness; and

(G) the Indebtedness of any partnership in which such Person is a general partner to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

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

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

"*Initial Notes*" has the meaning set forth in the preamble hereto.

"*Intercreditor Agreement*" means that certain Intercreditor Agreement, dated as of the Issue Date, by and between, among others, the Company, the RCF Collateral Agent and the Notes Collateral Agent.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (including by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others, but excluding accounts receivable, trade credit, advances to customers, commissions, travel and similar advances to employees, directors, consultants and independent contractors), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property.

For purposes of the definition of "*Unrestricted Subsidiary*" and Section 4.7 (i) "*Investments*" shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "*Investment*" in an Unrestricted Subsidiary in an amount (if positive) equal to (x) the Company's "*Investment*" in such Subsidiary at the time of such redesignation *less* (y) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; (ii) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company and (iii) any transfer of Capital Stock that results in an entity which became a Restricted Subsidiary after the Issue Date ceasing to be a Restricted Subsidiary shall be deemed to be an Investment in an amount equal to the fair market value (as determined by the Board of Directors of the Company in good faith as of the date of initial acquisition) of the Capital Stock of such entity owned by the Company and its Restricted Subsidiaries immediately after such transfer.

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

"*Issue Date*" means February 11, 2021.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

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

"*Margin Stock*" has the meaning assigned to such term in Regulation U issued by the FRB.

"*Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of voting and non-voting common Equity Interests of the Company or any parent entity on the date of the declaration of a Restricted Payment permitted pursuant to clause (8) of the second paragraph of Section 4.7 multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"*Material Real Property*" means any fee-owned real property that is not an Excluded Asset.

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating business.

"*Mortgaged Property*" means any Material Real Property required to be mortgaged pursuant to the terms of this Indenture and the Security Documents.

"*Net Income*" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends or accretion of any Preferred Stock.

"*Net Proceeds*" means the aggregate cash proceeds received by the Company or any Restricted Subsidiary in respect of any Asset Sale, in each case net of (1) fees, out of pocket expenses and other direct costs relating to such Asset Sale and including, without limitation, legal, consulting, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, (2) taxes or Permitted Tax Distributions (as defined herein) paid or payable by the Company or any Restricted Subsidiary as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (3) amounts required to be applied to the repayment of Indebtedness (including any required premiums or prepayment penalties) that is secured by the property or assets that are the subject of such Asset Sale on a basis that is prior to the Liens, if any, on such assets securing the Notes Obligations (4) the *pro rata* portion of Net Proceeds thereof attributable to minority interests and not available for distribution to or for the account of the Company and the Restricted Subsidiaries as a result thereof, (5) any costs associated with unwinding any related Hedging Obligations in connection with such transaction (6) any deduction of appropriate amounts to be provided by the Company as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company after such sale or other disposition thereof, including, without limitation, pension and other post- employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, (7) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with such Asset Sale; provided, that upon the termination of that escrow (other than in connection with a payment in respect of any such adjustment or satisfaction of indemnities), Net Proceeds will be increased by any portion of funds in the escrow that are released to the Company or any of its Restricted Subsidiaries and (8) the amount of any liabilities (other than Indebtedness in respect of the New Revolving Credit Facility and the Notes) directly associated with such asset being sold and retained by the Company or any of its Restricted Subsidiaries.

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

"*New Revolving Credit Facility*" means that certain senior secured revolving credit facility dated the date hereof, by and among the Company, the guarantors party thereto, the lenders from time-to-time party thereto and Barclays Bank PLC, as administrative agent.

"*Non-Guarantor Subsidiary*" means any Domestic Subsidiary that is not a Guarantor.

"*Note Custodian*" means the Trustee when serving as custodian for the Depositary with respect to the Global Notes, or any successor entity thereto.

"*Notes*" means the Initial Notes and any Additional Notes. The Initial Notes and the Additional Notes, if any, shall be treated as a single class for all purposes under this Indenture.

"*Notes Collateral Agent*" means the Trustee in its capacity as "*Notes Collateral Agent*" under this Indenture and under the Security Documents and any successor thereto in such capacity.

"*Notes Obligations*" means all Obligations owing pursuant to the Notes, this Indenture, the Guarantees and the Security Documents.

"*Obligations*" means any principal, interest, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities, payable under the documentation governing any Indebtedness, including any interest, fees and expenses, which but for the commencement of a bankruptcy or insolvency proceeding would have accrued on such obligations, whether or not a claim is allowed for such interest, fees or expenses in the related bankruptcy proceeding; *provided* that Obligations with respect to the Notes shall not include fees or indemnification in favor of other third parties other than the holders of the Notes and the Trustee.

"*Offer*" has the meaning set forth in the definition of "Offer to Purchase."

"*Offer to Purchase*" means a written offer (the "*Offer*") sent by the Company by first class mail, postage prepaid, to each Holder at his or her address appearing in the security register on the date of the Offer or for Global Notes an Offer sent via the applicable procedures of the DTC, offering to purchase up to the aggregate principal amount of Notes set forth in such Offer at the purchase price set forth in such Offer (as determined pursuant to this Indenture). Unless otherwise required by applicable law, the Offer shall specify an expiration date (the "*Expiration Date*") of the Offer to Purchase which shall be, subject to any contrary requirements of applicable law, not less than thirty (30) days or more than sixty (60) days after the date of mailing of such Offer and a settlement date (the "*Purchase Date*") for purchase of Notes within five (5) Business Days after the Expiration Date. The Company shall notify the Trustee at least three (3) days (or such shorter period as is acceptable to the Trustee) prior to the mailing of the Offer of the Company's obligation to make an Offer to Purchase, and the Offer shall be mailed by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase. The Offer shall also state:

(1) the Section of this Indenture pursuant to which the Offer to Purchase is being made;

(2) the Expiration Date and the Purchase Date;

(3) the aggregate principal amount of the outstanding Notes offered to be purchased pursuant to the Offer to Purchase (including, if less than 100%, the manner by which such amount has been determined pursuant to Section 4.10 (the "*Purchase Amount*");

(4) the purchase price to be paid by the Company for each $1,000 principal amount of Notes accepted for purchase (as specified pursuant to this Indenture) (the "*Purchase Price*");

(5) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in an integral multiple of $1,000 principal amount and that no partial repurchase may result in a note having a principal amount of less than $2,000;

(6) the place or places where Notes are to be surrendered for tender pursuant to the Offer to Purchase, if applicable;

(7) that, unless the Company defaults in making such purchase, any Note accepted for purchase pursuant to the Offer to Purchase will cease to accrue interest on and after the Purchase Date, but that any Note not tendered or tendered but not purchased by the Company pursuant to the Offer to Purchase will continue to accrue interest at the same rate;

(8) that, on the Purchase Date, the Purchase Price will become due and payable with respect to each Note accepted for payment pursuant to the Offer to Purchase;

(9) that each Holder electing to tender a Note pursuant to the Offer to Purchase will be required to surrender such Note or cause such Note to be surrendered at the place or places set forth in the Offer prior to the close of business on the Expiration Date (such Note being, if the Company or the Trustee so requires, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his or her attorney duly authorized in writing);

(10) that Holders will be entitled to withdraw all or any portion of Notes tendered if the Company (or its Paying Agent) receives, not later than the close of business on the Expiration Date, a telegram, telex, facsimile transmission or letter or instructions utilizing the applicable procedures of the DTC setting forth the name of the Holder, the aggregate principal amount of the Notes the Holder tendered, the certificate number of the Note the Holder tendered and a statement that such Holder is withdrawing all or a portion of his or her tender;

(11) that (a) if Notes having an aggregate principal amount less than or equal to the Purchase Amount are duly tendered and not withdrawn pursuant to the Offer to Purchase, the Company shall purchase all such Notes and (b) if Notes having an aggregate principal amount in excess of the Purchase Amount are tendered and not withdrawn pursuant to the Offer to Purchase, the Company shall purchase Notes having an aggregate principal amount equal to the Purchase Amount on a *pro rata* basis (with such adjustments as may be deemed appropriate so that only Notes in denominations of $1,000 principal amount or integral multiples thereof shall be purchased), so long as no partial repurchase results in a Note having a principal amount of less than $2,000; and

(12) if applicable, that, in the case of any Holder whose Note is purchased only in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in the aggregate principal amount equal to and in exchange for the unpurchased portion of the aggregate principal amount of the Notes so tendered.

"*Offering Memorandum*" means the offering memorandum, dated as of February 3, 2021, relating to the Initial Notes.

"*Officer*" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Company.

"*Officer's Certificate*" means a certificate signed on behalf of the Company, by an Officer of the Company, to be delivered to the Trustee.

"*Opinion of Counsel*" means an opinion reasonably acceptable to the Trustee (and, if the Company is entitled to receive such opinion pursuant to Section 2.16, reasonably acceptable to the Company) from legal counsel who may be an employee of the Company.

"*Pari Passu Lien Obligations*" means Indebtedness secured by a Lien that is equal in priority to the Liens on Collateral securing the Notes (without regard to control of remedies) and is subject to the Intercreditor Agreement (or such other intercreditor agreement having substantially similar terms as the Intercreditor Agreement, taken as a whole) *provided* that (i) the holders of such Obligations, or the Pari Passu Lien Representative therefor, executes a joinder agreement to the Security Agreement in the form attached thereto agreeing to be bound thereby and (ii) the Company has designated such Obligations as "Pari Passu Lien Obligations" under the Intercreditor Agreement.

"*Pari Passu Lien Representative*" means, with respect to any Pari Passu Lien Obligations, the administrative agent, trustee or other authorized representative for the holders of such Pari Passu Lien Obligations pursuant to the credit agreement, indenture or other definitive documentation therefor.

"*Participant*" means, with respect to DTC, a Person who has an account with DTC.

"*Paying Agent*" means any Person authorized by the Company to pay the principal of, premium, if any, or interest on any Notes on behalf of the Company.

"*Permitted Asset Swap*" means the substantially concurrent purchase and sale or exchange of Permitted Business Assets or a combination of Permitted Business Assets and cash or Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with Section 4.10.

"*Permitted Bond Hedge Transaction*" means one or more call or capped call options (or substantively equivalent derivative transaction) relating to the Company's Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Company) purchased by the Company in connection with the issuance of any Permitted Convertible Notes; *provided*, however, that the purchase price for such Permitted Bond Hedge Transactions, less the proceeds received by the Company from the sale of any related Permitted Warrant Transactions, does not exceed the net proceeds received by the Company from the issuance of such Permitted Convertible Notes in connection with such Permitted Bond Hedge Transactions.

"*Permitted Business*" means any business and any services, activities or businesses incidental, or directly related or similar to any line of business engaged in or proposed to be engaged in by the Company and its Restricted Subsidiaries and Investments as of the Issue Date and any business or other activity that is a reasonable extension, development or expansion thereof or ancillary, complementary, incidental or related thereto.

"*Permitted Business Assets*" means assets (other than cash or Cash Equivalents) used or useful in a Permitted Business; *provided* that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary will not be deemed to be Permitted Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"*Permitted Convertible Indebtedness*" means (a) the Convertible Senior Notes, (b) unsecured Indebtedness of the Company or a Subsidiary thereof that (i) as of the date of issuance thereof contains customary conversion or exchange rights and customary offer to repurchase rights for transactions of such type (in each case, as determined by the Company in good faith) and (ii) is convertible into or exchangeable for shares of common stock of the Company (or other securities or property following a merger event, reclassification or other change of the common stock of the Company), cash or a combination thereof (such amount of cash determined by reference to the price of the Company common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Company and (c) any guarantee by the Company or any Guarantor of Indebtedness of the Company or a Subsidiary thereof described in clause (b); provided that that such Indebtedness is permitted to be incurred pursuant to Section 4.9.

"*Permitted Convertible Indebtedness Call Transaction*" means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

"*Permitted Holder*" means Standard General L.P. and its affiliates.

"*Permitted Investments*" means

(1) any Investment in the Company or any of its Restricted Subsidiaries (including guarantees of obligations of its Restricted Subsidiaries);

(2) any Investment in cash and Cash Equivalents and Investments that were Cash Equivalents when made;

(3) any Investment by the Company or any Restricted Subsidiary in a Person if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary and, in each case, any Investment held by such Person as long as not acquired in contemplation of such acquisition;

(4) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with an Asset Sale made pursuant to Section 4.10 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing or made pursuant to binding commitments in effect on the Issue Date and any modification, increase, replacement, refinancing, refund, reinvestment, renewal or extension thereof, but only to the extent not involving additional advances unless required by the terms of the Investments as in effect on the Issue Date or otherwise permitted by this Indenture, contributions or other Investments of cash or other assets or other increases thereof other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities;

(6) loans and advances to officers, directors, employees and consultants and any guarantees not in excess of the greater of $10.0 million and 10.0% of EBITDA in the aggregate principal amount outstanding at any one time;

(7) any Investment acquired by the Company or any Restricted Subsidiary (A) in exchange for any other Investment, accounts receivable, security deposit or prepayment held by the Company or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, (B) as a result of a foreclosure by the Company or Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (C) in satisfaction of judgements against another Person;

(8) Hedging Obligations permitted under clause (9) of the definition of "*Permitted Debt*;"

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

(10) any Investment by the Company or a Restricted Subsidiary having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash and/or marketable securities), not to exceed an amount equal to the greater of $35.0 million and 35.0% of EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided*, *however*, that if such Investment is in Capital Stock of a Person that subsequently becomes a Restricted Subsidiary, such Investment shall thereafter be deemed permitted under clause (1) above and shall not be included as having been made pursuant to this clause (10);

(11) Investments the payment for which consists of Equity Interests of the Company or any of its direct or indirect parent entities (exclusive of Disqualified Stock) or Unrestricted Subsidiaries; *provided*, *however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the first paragraph of Section 4.7;

(12) guarantees (including Guarantees) of (a) Indebtedness permitted under Section 4.9 or (b) operating leases (excluding Capitalized Lease Obligations) and performance guarantees consistent with past practice;

(13) Investments consisting of leasing or licensing of intellectual property pursuant to joint marketing arrangements with other Persons;

(14) any Investment (a) in a Similar Business or joint ventures having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (14) that are at that time outstanding, not to exceed the greater of $50.0 million and 50.0% of EBITDA at the time of such Investment (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value) and (b) without duplication with clause (a), in an amount equal to the net cash proceeds from any sale or disposition of, or any distribution in respect of, Investments acquired after the Issue Date, to the extent the acquisition of such Investments was financed in reliance on clause (a) *provided*, *however*, that if any Investment pursuant to this clause (14) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (14);

(15) Investments consisting of earnest money deposits required in connection with a purchase agreement or other acquisition otherwise permitted under Section 4.7;

(16) Investments made as part of the Transactions;

(17) Investments resulting from pledges and deposits that are Permitted Liens;

(18) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(19) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Company;

(20) purchases or acquisitions of inventory, supplies, materials and equipment or purchases, acquisitions or licenses of contract rights, intellectual property or other assets or services in each case in the ordinary course of business;

(21) any Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment or other similar assets, or the licensing or contribution of intellectual property pursuant to joint development, joint venture or marketing arrangements with other Persons;

(22) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Company;

(23) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of the second paragraph of Section 4.11.

(24) any other Investment, so long as, after giving pro forma effect to such Investment, the Secured Leverage Ratio shall be no greater than 2.75 to 1.00.

(25) Investments in any Indebtedness of the Company or the Restricted Subsidiaries;

(26) Investments in the ordinary course of business or consistent with past practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(27) Investments in Unrestricted Subsidiaries (a) having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (27) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities, not to exceed the greater of $10.0 million and 10.0% of EBITDA at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value) and (b) without duplication with clause (a), in an amount equal to the net cash proceeds from any sale or disposition of, or any distribution in respect of, Investments acquired after the Issue Date, to the extent the acquisition of such Investments was financed in reliance on clause (a) *provided*, *however*, that if any Investment pursuant to this clause (27) is made in any Person that is an Unrestricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (27);

(28) deposits in the TMSA Account and the investment of any moneys in such account; and

(29) to the extent constituting Investments, the issuance of, entry into (including any payments of premiums in connection therewith), and performance of obligations under Permitted Convertible Indebtedness, Permitted Bond Hedge Transactions and Permitted Warrant Transactions.

"*Permitted Liens*" means the following types of Liens:

(1) Liens existing on the Issue Date (other than Liens incurred in connection with the New Revolving Credit Facility and Liens on the Notes);

(2) Liens securing (A) Indebtedness permitted to be incurred pursuant to clause (1), (11), (13), (14), (17), (22) and (32), of the definition of "*Permitted Debt*" and *provided* that Liens securing Obligations relating to any Indebtedness permitted to be incurred pursuant to clause (13) of the definition of "*Permitted Debt*" relate only to Obligations relating to Refinancing Indebtedness that (x) is secured by Liens on the same assets as the assets that secured the Indebtedness being refinanced or (y) extends, replaces, refunds, refinances, renews or defeases Indebtedness solely to the extent such Indebtedness was secured by a Lien prior to such refinancing and (B) Indebtedness that, at the time of incurrence, does not exceed the maximum principal amount of Indebtedness that, as of such date and after giving *pro forma* effect to the incurrence of such Indebtedness and the application of the proceeds therefrom on such date, would not cause the Secured Leverage Ratio of the Company to exceed 3.25 to 1.0 and any Refinancing Indebtedness in respect thereof with Pari Passu Lien Obligations permitted by clause (13) of the definition of "*Permitted Debt*;"

(3) Liens securing the Notes (other than Additional Notes) and the related Guarantees;

(4) deposits of cash or government bonds made in the ordinary course of business to secure surety or appeal bonds to which such Person is a party;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptance issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice;

(6) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided*, *however*, that such Liens are not created or incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized in connection with, such other Person becoming such a Subsidiary; *provided*, *further*, *however*, that such Liens may not extend to any other property owned by the Company or any of its Restricted Subsidiary (other than assets and property affixed or appurtenant thereto and the proceeds or products thereof and other than after- acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted under this Indenture that require or include, pursuant to their terms at such time, a pledge of after- acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition);

(7) Liens on property or Capital Stock at the time the Company or a Restricted Subsidiary acquired the property or Capital Stock, including any acquisition by means of a merger or consolidation with or into the Company or any of its Restricted Subsidiaries; *provided*, *however*, that (A) such Liens are not created or incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized for, such acquisition and (B) such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary; *provided, further, however* that the foregoing limitation shall not apply to Indebtedness of any Person that becomes a Restricted Subsidiary in connection with an acquisition or any other Investment not prohibited by the provisions of the covenant described under Section 4.7 (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Company or a Restricted Subsidiary) if such Indebtedness is outstanding prior to such Person becoming a Restricted Subsidiary and to the extent such Indebtedness is not incurred in contemplation of such acquisition or Investment;

(8) Liens securing Hedging Obligations (and the costs thereof);

(9) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person or other similar instruments in order to facilitate the purchase, shipment or storage of such inventory or other goods;

(10) Liens on the properties or assets of the Company or any Restricted Subsidiary in favor of the Company or any Restricted Subsidiary, the Trustee or the RCF Collateral Agent;

(11) Liens to secure any modification, refinancing, refunding, restatement, exchange, extension, renewal or replacement (or successive refinancing, refunding, restatement, exchange, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness that is secured by a Lien existing on the Issue Date or referred to in clauses (6), (7), (18), (20), (21), (22) and (31) of this definition; *provided*, *however*, that such Liens (x) are no less favorable to the holders of the Notes taken as a whole, and are not more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being refinanced; and (y) do not extend to or cover any property or assets of the Company or any of its Restricted Subsidiaries not securing the Indebtedness so refinanced;

(12) [reserved];

(13) Liens for taxes, assessments or other governmental charges or levies not yet delinquent or which are being contested in good faith by appropriate proceedings and with respect to which appropriate reserves have been taken in accordance with GAAP or for property taxes on property that the Company or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property;

(14) judgment liens in respect of judgments that do not constitute an Event of Default and notices of lis pendens and associated rights so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(15) pledges, deposits or security under workmen's compensation, unemployment insurance, employers health tax, and other social security laws or regulations or other insurance related obligations, or deposits to secure the performance of tenders, contracts (other than for the payment of Indebtedness) or leases, or deposits to secure public or statutory obligations, or deposits as security for contested taxes (to the extent such taxes are diligently contested in good faith by appropriate proceedings) or import or customs duties or for the payment of rent, or deposits or other security securing liabilities to insurance carriers under insurance or self-insurance arrangements or earnest money deposits required in connection a purchase agreement or other acquisition, in each case incurred in the ordinary course of business or consistent with past practice;

(16) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable law, (i) arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the Company or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(17) survey exceptions and such matters as an accurate survey would disclose, special assessments, covenants, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of business or to the ownership of properties that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business, and any extension, renewal or replacement of any such Liens;

(18) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Company or any of its Restricted Subsidiaries or the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Company or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(19) banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution;

(20) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases or consignments entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(21) (A) other Liens securing Indebtedness for borrowed money or other obligations with respect to property or assets with an aggregate fair market value (valued at the time of creation thereof) that does not exceed the greater of $30.0 million and 30.0% of EBITDA and (B) Liens securing Indebtedness incurred pursuant to clause (4) of the definition of "*Permitted Debt"; provided*, *however*, that with respect to Capitalized Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to such assets) other than the assets subject to such Capitalized Lease Obligations; *provided* that individual financings of property provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to pooling, commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(24) 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 Company or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into by the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;

(25) Liens solely on any cash earnest money deposits made by the Company or any of its Restricted Subsidiaries in connection with any letter of intent or agreement permitted under this Indenture;

(26) Liens to secure Indebtedness incurred pursuant to clauses (19) and (20) of the definition of "*Permitted Debt*";

(27) Liens to secure Indebtedness incurred pursuant to clause (21) of the definition of "*Permitted Debt.*"

(28) Liens arising by operation of law under Article 2 of the Uniform Commercial Code in favor of a reclaiming seller of goods or buyer of goods and Liens arising from Uniform Commercial Code financing statements, including precautionary financing statements, or any similar filings made in respect of operating leases or consignments entered into by the Company or any of its Restricted Subsidiaries;

(29) security given to a public or private utility or any governmental authority as required in the ordinary course of business or consistent with past practice;

(30) landlords', lessors' and sublessors' Liens in respect of rent not in default for more than 60 days or the existence of which, individually or in the aggregate, would not, in the good faith judgment of the Company, materially adversely affect the Company's business or its ability to pay any Obligation under the Notes;

(31) Liens in favor of customs and revenues authorities imposed by applicable law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than 60 days or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the Company or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(32) Liens on securities which are the subject of repurchase agreements incurred in the ordinary course of business;

(33) Liens on the Capital Stock of Unrestricted Subsidiaries or joint ventures;

(34) Liens securing Indebtedness incurred in accordance with clauses (5) and (16) and (32) of the definition of "*Permitted Debt*";

(35) Liens arising from precautionary Uniform Commercial Code financing statements;

(36) Liens on Capital Stock of any joint venture pursuant to the relevant joint venture agreement or arrangement;

(37) Liens on vehicles or equipment of Company or any of the Restricted Subsidiaries granted in the ordinary course of business;

(38) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Indenture;

(39) [reserved];

(40) Liens securing any COVID-19 Relief Funds;

(41) Liens ranking junior in priority to the Liens securing the Notes; *provided* that after giving effect to such Liens, the Fixed Charge Coverage Ratio would be at least 2.0 to 1.0 and provided further that such Liens are subject to a junior lien intercreditor agreement;

(42) other Liens securing Indebtedness (including Capitalized Lease Obligations) in an aggregate principal amount not to exceed the greater of (x) $25.0 million and (y) 25.0% of EBITDA; and

(43) Liens relating to future escrow arrangements securing Indebtedness, including (i) Liens on escrowed proceeds from the issuance of Indebtedness for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, arrangers, trustee or collateral agent thereof) and (ii) Liens on cash or Cash Equivalents set aside at the time of the incurrence of any Indebtedness, in either case to the extent such cash or Cash Equivalents prefund the payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance of such Indebtedness) and are held in an escrow account or similar arrangement to be applied for such purpose.

For purposes of determining compliance with this definition, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but are permitted to be incurred in part under any combination thereof and of any other available exemption, (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, Company shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (C) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (2)(B) above (giving *pro forma* effect to the incurrence of such portion of such Indebtedness), the Company, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (2)(B) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition and (D) at the time of Incurrence, the Company will be entitled to divide and classify an item of Secured Indebtedness in more than one of clauses (1) through (43) of this definition of Permitted Lien without giving *pro forma* effect to the Indebtedness Incurred pursuant to clauses (1) through (43) (other than clause 2(b) of the definition of Permitted Lien when calculating the amount of Indebtedness that may be Incurred pursuant to clause 2(b) of this definition).

"*Permitted Warrant Transaction*" means one or more call options, warrants or rights to purchase (or substantively equivalent derivative transaction) relating to the Company's Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Company) sold by the Company substantially concurrently in connection with any purchase by the Company of a related Permitted Bond Hedge Transaction.

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

"*Pledge Agreement*" means the pledge agreement to be dated on the Issue Date among the Notes Collateral Agent, the Company and the Guarantors from time to time party thereto.

"*Preferred Stock*" means any Equity Interest with preferential rights of payment of dividends upon liquidation, dissolution or winding up.

"*Purchase Amount*" has the meaning set forth in the definition of "Offer to Purchase."

"*Purchase Date*" has the meaning set forth in the definition of "Offer to Purchase."

"*Purchase Price*" has the meaning set forth in the definition of "Offer to Purchase."

"*Rating Agencies*" means any of Moodys and S&P or if Moodys or S&P or neither shall make a rating publicly available on the Notes, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company (with prior notice to the Trustee) which shall be substituted for Moody's or S&P, as the case may be.

"*RCF Collateral Agent*" means the collateral agent under the New Revolving Credit Facility.

"*RCF Obligations*" means the "Obligations" under and as defined in the New Revolving Credit Facility.

"*Redemption Price,*" when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

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

"*Replacement Assets*" means:

(1) substantially all the assets of a Person primarily engaged in a Permitted Business; or

(2) a majority of the Voting Stock of any Person primarily engaged in a Permitted Business that will become, on the date of acquisition thereof, a Restricted Subsidiary.

"*Resale Restriction Termination Date*" means for any Transfer Restricted Note (or beneficial interest therein), that is (a) not a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.6(b)), one year (or such other period specified in Rule 144(d)) from the Issue Date or, if any Additional Notes that are Transfer Restricted Notes and are not Regulation S Global Notes have been issued before the Resale Restriction Termination Date for any Transfer Restricted Notes, from the latest such original issue date of such Additional Notes, and (b) a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.6(b)), the date on or after the 40th consecutive day beginning on and including the later of (i) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S) pursuant to Regulation S and (ii) the issue date for such Notes.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer assigned to the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant treasurer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

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

"*Restricted Notes Legend*" means the legend identified as such in Exhibit A.

"*Restricted Subsidiary*" means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided*, *however*, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"*S&P*" means S&P Global, Inc., and any successor to its rating business.

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

"*SEC*" means the Securities and Exchange Commission

"*Secured Indebtedness*" means any Indebtedness of the Company or a Restricted Subsidiary secured by a Lien.

"*Secured Leverage Ratio*" means, with respect to any Person, at any date the ratio of (i) Secured Indebtedness secured by a first priority Lien on any Collateral minus the aggregate amount of unrestricted cash and Cash Equivalents of such Person and its Restricted Subsidiaries computed as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date to (ii) EBITDA of such Person for the four full fiscal quarters for which internal financial statements prepared in accordance with GAAP are available immediately preceding the date on which such additional Indebtedness is incurred. In the event that the Company or any of its Restricted Subsidiaries incurs or redeems any Indebtedness subsequent to the commencement of the period for which the Secured Leverage Ratio is being calculated but prior to the event for which the calculation of the Secured Leverage Ratio is made, then the Secured Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four fiscal quarter period. The Secured Leverage Ratio shall be calculated in a manner consistent with the definition of "Fixed Charge Coverage Ratio," including any *pro forma* calculations to EBITDA (including for acquisitions).

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Security Agreement*" means the security agreement to be dated on the Issue Date among the Notes Collateral Agent, the Company and the Guarantors from time to time party thereto.

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

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

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

"*Similar Business*" means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries or Investments on the Issue Date or any business that is similar, reasonably related, complementary, incidental or ancillary thereto, or is a reasonable extension, development or expansion thereof.

"*Specified Intellectual Property*" means the Company's intellectual property rights in the brands Zig-Zag® and Stoker's®, including any trademarks, trade dress and copyrights solely relating thereto.

"*Specified Subsidiaries*" means Standard Merger Sub LLC, Vaporfi Franchising, LLC and Vapor Shark Franchising, LLC.

"*Specified Transaction*" means, with respect to any period, any Investment, sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, or other event that by the terms of this Indenture requires such covenant to be calculated on a *pro forma* basis after giving *pro forma* effect thereto.

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

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

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity, of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership, joint venture, limited liability company or similar entity of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise and (y) such Person or any Wholly Owned Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"*TMSA Account*" means that escrow account of the Company the balance of which consists exclusively of (and is established as an account solely for the purposes of holding), amounts required to comply with the Tobacco Master Settlement Agreement.

"*Tobacco Master Settlement Agreement*" means the Master Settlement Agreement entered into on November 23, 1998, by and among the respective officials of each Settling State (as defined therein), Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Liggett Group Inc., and Commonwealth Brands, Inc.

"*Transactions*" means the "Refinancing Transactions" as defined in the Offering Memorandum under the heading "Summary—Refinancing Transactions."

"*TIA*" means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb), as amended.

"*Transfer Restricted Notes*" means Notes that bear or are required to bear the Restricted Notes Legend.

"*Treasury Rate*" means, as of the applicable redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to such redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from such redemption date to February 15, 2023; *provided*, *however*, that if the period from such redemption date to February 15, 2023 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used. The Treasury Rate will be determined by the Company or its agent.

"*Trustee*" has the meaning set forth in the preamble to this Indenture.

"*UCC*" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided*, *however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Notes Collateral Agent's security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"*United States Dollar Equivalent*" means with respect to any monetary amount in a currency other than United States dollars, at any time for determination thereof, the amount of United States dollars obtained by converting such foreign currency involved in such computation into United States dollars at the spot rate for the purchase of United States dollars with the applicable foreign currency as published in The Wall Street Journal in the "*Exchange Rates*" column under the heading "*Currency Trading*" on the date two (2) Business Days prior to such determination.

Except as otherwise set forth in Section 4.9, whenever it is necessary to determine whether the Company has complied with any covenant in this Indenture or a Default has occurred and an amount is expressed in a currency other than United States dollars, such amount will be treated as the United States Dollar Equivalent determined as of the date such amount is initially determined in such currency.

"*United States Government Securities*" means securities that are

(a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such United States Government Securities or a specific payment of principal of or interest on any such United States Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the United States Government Securities or the specific payment of principal of or interest on the United States Government Securities evidenced by such depository receipt.

"*Unrestricted Subsidiary*" means any Subsidiary (1) of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company, as provided below) and (2) of an Unrestricted Subsidiary. The Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Company or any Subsidiary of the Company (other than any Subsidiary of the Subsidiary to be so designated); *provided* that (a) any Unrestricted Subsidiary must be a Person of which shares of the Equity Interests (including partnership interests) entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or other governing body are owned, directly or indirectly, by the Company, (b) such designation complies with Section 4.7 and (c) each of (I) the Subsidiary to be so designated and (II) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender with respect to such Indebtedness has recourse to any of the assets of the Company or any Restricted Subsidiary. The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default or Event of Default shall have occurred and either (1) the Company could incur $1.00 of additional Indebtedness pursuant to the first paragraph of Section 4.9 or (2) (i) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would be equal to or greater than such ratio immediately prior to such designation or (ii) the Consolidated Leverage Ratio for the Company and its Restricted Subsidiaries would be equal to or less than such ratio immediately prior to such designation. Any such designation by the Board of Directors of the Company shall be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the Board Resolution giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

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

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

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

"*Wholly Owned Subsidiary*" of any Person means a Subsidiary of such Person, 100% of the outstanding Capital Stock of which (other than directors' qualifying shares and shares issued to foreign nationals under applicable law) are owned by such Person or by one or more Wholly Owned Subsidiaries of such Person or by such Person and one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.2 Other Definitions.

Term	Defined in Section
"Acceleration Notice"	6.2
"Act"	12.14(a)
"Affiliate Transaction"	4.11
"Agent Members"	2.6(a)
"Applicable Law"	12.17
"Authentication Order"	2.2
"CERCLA"	10.7(z)
"Change of Control Payment"	4.14
"Covenant Defeasance"	8.3
"Covenant Suspension Event"	4.19
"Event of Default"	6.1
"Excess Proceeds"	4.10
"Initial Default"	6.2
"Legal Defeasance"	8.2
"Offer Amount"	3.9
"QIB"	2.1(b)
"QIB Global Note"	2.1(b)
"Noteholder Direction"	7.5
"Notes Obligations"	10.1
"Permitted Debt"	4.9
"Permitted Tax Distributions"	4.7
"Position Representation"	7.5
"Refunding Capital Stock"	4.7
"Registrar"	2.3
"Regulation S"	2.1(b)
"Regulation S Global Note"	2.1(b)
"Restricted Payment"	4.7
"Retired Capital Stock"	4.7
"Reversion Date"	4.20
"Rule 144A"	2.1(b)
"Subject Lien"	4.19
"Successor Company"	5.1
"Successor Guarantor"	11.5
"Suspended Covenants"	4.19
"Suspension Date"	4.19
"Transaction Election"	1.5
"Transaction Test Date"	1.5
"Verification Covenant"	7.5

SECTION 1.3 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in, and made a part of, this Indenture. Notwithstanding the foregoing and for the avoidance of doubt, this Indenture will not be qualified under the TIA.

The following TIA terms have the following meanings:

"*indenture securities*" means the Notes and any Guarantee; and

"*obligor*" on the Notes means the Company and any successor obligor upon the Notes or any Guarantee.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by the Commission rule under the TIA have the meanings so assigned to them therein.

SECTION 1.4 Rules of Construction.

Unless the context otherwise requires:

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

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

(3) "or" is not exclusive;

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

(5) unless otherwise specified, any reference to Section, Article or Exhibit refers to such Section, Article or Exhibit, as the case may be, of this Indenture;

(6) provisions apply to successive events and transactions;

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

(8) in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.5 Limited Condition Transactions.

Notwithstanding anything in this Indenture to the contrary, when (i) calculating the availability under any basket, ratio or other financial test under this Indenture, (ii) determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or (iii) determining compliance with any other condition precedent to any action or transaction, and any actions or transactions related thereto (including acquisitions, Asset Sales, Investments, the incurrence or issuance of Indebtedness (including executing commitments therefor), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments), the date of determination of such basket, ratio or other financial test, whether any Default or Event of Default has occurred, is continuing or would result therefrom, or the satisfaction of any other condition precedent, shall, at the option of the Company (the Company's election to exercise such option a "*Transaction Election*"), be deemed to be the date that the definitive agreement (or also, in the case of the incurrence of Indebtedness, the date binding commitment letters therefor) is entered into (or, if applicable, the date of delivery of an irrevocable notice or similar event) (any such date, the "*Transaction Test Date*") and such baskets, ratios or other financial tests, absence of defaults, satisfaction of conditions precedent and other provisions shall be calculated on a pro forma basis after giving effect to such transactions to be entered into in connection therewith (including acquisitions, Asset Sales, Investments, the incurrence or issuance of Indebtedness (including executing commitments therefor), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) as if they occurred at the beginning of the applicable period for the Transaction Test Date for purposes of determining the ability to consummate any such transaction (and not for purposes of any subsequent availability of any basket or ratio), and, for the avoidance of doubt, (x) if any of such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions precedent or other provisions are exceeded, breached or otherwise failed as a result of fluctuations in such basket or ratio (including due to fluctuations in EBITDA, Consolidated Total Debt, Consolidated Net Income, Consolidated Total Assets or other similar financial metric of the Company or the target company) subsequent to such date of determination and at or prior to the consummation of the relevant transaction, such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions precedent and other provisions will not be deemed to have been exceeded, breached or otherwise failed as a result of such fluctuations solely for purposes of determining whether the transaction and related transactions (including acquisitions, Asset Sales, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) are permitted under this Indenture and (y) such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions and other provisions shall not be tested at the time of consummation of the transaction or related transactions solely for the purpose of determining whether such transaction is permitted under this Indenture; provided, further, that if the Company has made a Transaction Election for any transaction, then, in connection with any subsequent calculation of any ratio or basket availability with respect to any other transaction or otherwise on or following the relevant Transaction Test Date and prior to the consummation of such transaction, unless and until such transaction has been abandoned (or revoked via an Officer's Certificate) or such definitive agreement has expired or been terminated prior to consummation thereof, any such ratio or basket shall be calculated on a pro forma basis assuming such transaction and other transactions in connection therewith (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) have been consummated.

Notwithstanding anything to the contrary, the Trustee shall have no responsibility, nor shall it have any liability to the Company, any holder or any third party, for calculating any basket, ratio or other financial test under this Indenture, determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or determining the Company's compliance with any other condition precedent to any action or transaction.

ARTICLE II

THE NOTES

SECTION 2.1 Form and Dating.

The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A attached hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes initially shall be issued only in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

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

(a) The Notes shall be issued initially in the form of one or more Global Notes substantially in the form attached as Exhibit A hereto, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee as custodian for the Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided.

(b) Each Global Note shall represent such of the outstanding Notes as shall be specified therein, and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6.

(c) Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Note Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

(d) Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture.

(e) Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

(f) Except as set forth in Section 2.6, the Global Notes may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor of the Depositary or its nominee.

(g) The Initial Notes are being issued by the Company only (i) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act ("*Rule 144A*")) ("*QIBs*") and (ii) in reliance on Regulation S under the Securities Act ("*Regulation S*"). After such initial issuance, Initial Notes that are Transfer Restricted Notes may be transferred as provided in the Restricted Legend. Initial Notes that are offered in reliance on Rule 144A shall be issued in the form of one or more permanent Global Notes substantially in the form set forth in Exhibit A (collectively, the "*QIB Global Note*"), deposited with the Trustee, as Note Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided. Initial Notes that are offered in offshore transactions in reliance on Regulation S shall be issued in the form of one or more permanent Global Notes substantially in the form set forth in Exhibit A, (the "*Regulation S Global Note*") duly executed by the Company and authenticated by the Trustee as hereinafter provided shall be deposited with the Trustee, as custodian for the Depositary. The QIB Global Note and the Regulation S Global Note shall each be issued with separate CUSIP numbers. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as Note Custodian. Transfers of Notes among QIBs and to or by purchasers pursuant to Regulation S shall be represented by appropriate increases and decreases to the respective amounts of the appropriate Global Notes, as more fully provided in Section 2.16.

(h) Sections 2.1(b), 2.1(c) and 2.1(d) shall apply only to Global Notes deposited with or on behalf of the Depositary.

(i) The Company shall execute and the Trustee shall, in accordance with Section 2.1(b) and this Section 2.1(c), authenticate and deliver the Global Notes that (i) shall be registered in the name of the Depositary or the nominee of the Depositary and (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions or held by the Trustee as Note Custodian for the Depositary.

(j) The Trustee shall receive an Authentication Order prior to the authentication of the securities being issued and shall be fully protected in relying thereupon.

(k) Notes issued in certificated form shall be substantially in the form of Exhibit A attached hereto.

SECTION 2.2 Execution and Authentication.

An Officer shall sign the Notes for the Company by manual or facsimile signature.

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

A Note shall not be valid until authenticated by the manual signature of a Responsible Officer of the Trustee. The signature of a Responsible Officer of the Trustee shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall, upon a written order of the Company signed by one Officer directing the Trustee to authenticate the Notes and certifying that all conditions precedent to the issuance of the Notes contained herein have been complied with ("*Authentication Order*") and receipt of an Opinion of Counsel, authenticate Notes for original issue up to the aggregate principal amount stated in the Notes. The aggregate principal amount of Notes outstanding at any time may not exceed such amount except as provided in Section 2.8.

At any time and from time to time, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver Additional Notes in an aggregate principal amount specified in such Authentication Order for such Additional Notes issued hereunder and, in the case of any issuance of Additional Notes pursuant to Section 2.17, such Authentication Order shall certify that such issuance is in compliance with Section 2.17.

On the Issue Date, the Trustee shall, upon receipt of an Authentication Order and an Opinion of Counsel as to, among other things, the enforceability of this Indenture and the Initial Notes, authenticate and deliver the Initial Notes. In addition, at any time and from time to time, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver Additional Notes in an aggregate principal amount specified in such Authentication Order for such Additional Notes issued hereunder and, in the case of any issuance of Additional Notes pursuant to Section 2.17, such Authentication Order shall certify that such issuance is in compliance with Section 2.17.

SECTION 2.3 Registrar; Paying Agent.

The Company shall maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and (ii) an office or agency where Notes may be presented for payment to a Paying Agent. The Registrar shall keep a register of the Notes and of their transfer and exchange. Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer or any interest in any Note (including any transfers between or among beneficial owners of interests in any global notes) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of this Indenture and to examine the same to determine substantial compliance as to form with the express requirements hereof. Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the depositary. The Company may appoint one or more co- registrars and one or more additional paying agents. The term "Registrar" includes any co- registrar, and the term "*Paying Agent*" includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Restricted Subsidiaries may act as Paying Agent or Registrar.

The Company shall notify the Trustee in writing, and the Trustee shall notify the Holders, of the name and address of any Agent not a party to this Indenture. The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. Such agreement shall implement the provisions of this Indenture that relate to such Agent. If the Company fails to appoint or maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such, and shall be entitled to appropriate compensation in accordance with Section 7.7. The Trustee has been given the responsibility or right to appoint a Paying Agent or Agent and the Company will be responsible for paying each such party provided that such fees are individually and in the aggregate (if applicable) reasonable.

The Company initially appoints the Trustee to act as the Note Custodian, Registrar and Paying Agent.

The Company initially appoints DTC to act as the Depositary with respect to the Global Notes.

If the Company enters into an agency agreement with any registrar, paying agent, co-registrar or transfer agent that is not a party to this Indenture, it shall notify the Trustee in writing of the name and address of each such agent.

SECTION 2.4 Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any Default by the Company in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay to the Trustee all money held by it in trust for the benefit of the Holders or the Trustee. The Company at any time may require a Paying Agent to pay all money held by it in trust for the benefit of the Holders or the Trustee to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for such money. If the Company or any of its Restricted Subsidiaries acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon the occurrence of any of the events specified in Section 6.1, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least seven (7) Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders, including the aggregate principal amount of the Notes held by each Holder thereof, and the Company shall otherwise comply with TIA § 312(a).

SECTION 2.6 Book-Entry Provisions for Global Securities.

(a) Each Global Note shall (i) be registered in the name of the Depositary for such Global Notes or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear legends as required by Section 2.6(e).

Members of, or participants in, the Depositary ("*Agent Members*") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as Note Custodian, or under such Global Note, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any Agent or other agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of an owner of a beneficial interest in any Global Note.

The Trustee shall have no responsibility or obligation to any Holder that is a member of (or a Participant in) DTC or any other Person with respect to the accuracy of the records of DTC (or its nominee) or of any member or Participant thereof, with respect to any ownership interest in the Notes or with respect to the delivery of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to the Notes. The Trustee may conclusively rely (and shall be fully protected in relying) upon information furnished by DTC with respect to its members, participants and any beneficial owners in the Notes.

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Note may be transferred in accordance with Section 2.16 and the rules and procedures of the Depositary. In addition, Certificated Notes shall be transferred to all beneficial owners (or the requesting beneficial owners, in the case of clause (ii)) in exchange for their beneficial interests only if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Notes or the Depositary ceases to be a "clearing agency" registered under the Exchange Act and a successor depositary is not appointed by the Company within ninety (90) days of such notice, (ii) an Event of Default of which a Responsible Officer of the Trustee has actual notice has occurred and is continuing and the Registrar has received a request from any beneficial owner of an interest in any Global Note (subject to the third paragraph of Section 2.6(a)) to issue such Certificated Notes or (iii) the Company, in its sole discretion, notifies the Trustee that it elects to cause the issuance of Certificated Notes.

(c) In connection with the transfer of the entire Global Note to beneficial owners pursuant to clause (b) of this Section, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note an equal aggregate principal amount of Certificated Notes of authorized denominations.

(d) The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interest through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(e) Each Global Note shall bear the Global Note Legend on the face thereof.

(f) At such time as all beneficial interests in Global Notes have been exchanged for Certificated Notes, redeemed, repurchased or cancelled, all Global Notes shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Certificated Notes, redeemed, repurchased or cancelled, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note, by the Trustee or the Note Custodian, at the direction of the Trustee, to reflect such reduction.

(g) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Certificated Notes at the Registrar's request.

(2) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any stamp or transfer tax or similar governmental charge payable in connection therewith (other than any such stamp or transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.1, 2.10, 3.6, 4.10, 4.14 and 9.5 hereto).

(3) All Global Notes and Certificated Notes issued upon any registration of transfer or exchange of Global Notes or Certificated Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Certificated Notes surrendered upon such registration of transfer or exchange.

(4) The Registrar shall not be required (A) to issue, to register the transfer of or to exchange Notes during a period beginning at the opening of fifteen (15) days before the day of any selection of Notes for redemption under Section 3.2 and ending at the close of business on the day of such selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part, or (C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(5) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and neither the Trustee, any Agent nor the Company shall be affected by notice to the contrary.

(6) The Trustee shall authenticate Global Notes and Certificated Notes in accordance with the provisions of Section 2.2. Except as provided in Section 2.6(b), neither the Trustee nor the Registrar shall authenticate or deliver any Certificated Note in exchange for a Global Note.

(7) Each Holder agrees to provide indemnity to the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

(8) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by the terms of this Indenture, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. Further, neither the Trustee or Registrar nor any of its agents shall have any responsibility for any actions taken or not taken by the Depositary.

SECTION 2.7 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, or the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon the written order of the Company signed by an Officer of the Company, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company and the Trustee may charge for their expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

SECTION 2.8 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.8 as not outstanding. Except as set forth in Section 2.9, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.1, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary thereof or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

SECTION 2.9 Treasury Notes.

In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any Affiliate of the Company shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes shown on the register as being so owned shall be so disregarded. Notwithstanding the foregoing, Notes that are to be acquired by the Company or an Affiliate of the Company pursuant to an exchange offer, tender offer or other agreement shall not be deemed to be owned by such entity until legal title to such Notes passes to such entity.

SECTION 2.10 Temporary Notes.

Until Certificated Notes are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Notes upon a written order of the Company signed by one Officer of the Company. Temporary Notes shall be substantially in the form of Certificated Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall upon receipt of a written order of the Company signed by one Officer authenticate Certificated Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

SECTION 2.11 Cancellation.

The Company at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder or which the Company may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. All Notes surrendered for registration of transfer, exchange or payment, if surrendered to any Person other than the Trustee, shall be delivered to the Trustee. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation. Subject to Section 2.7, the Company may not issue new Notes to replace Notes that it has redeemed or paid or that have been delivered to the Trustee for cancellation. All cancelled Notes held by the Trustee shall be disposed of in accordance with its customary practice, and certification of their disposal delivered to the Company upon its request therefor.

SECTION 2.12 Defaulted Interest.

If the Company defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner *plus*, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, which date shall be at the earliest practicable date but in all events at least five (5) Business Days prior to the payment date, in each case at the rate provided in the Notes and in Section 4.1. The Company shall fix or cause to be fixed each such special record date and payment date and shall promptly thereafter notify the Trustee of any such date. At least fifteen (15) days before the special record date, the Company (or the Trustee, in the name and at the expense of the Company) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

SECTION 2.13 Record Date.

Unless otherwise set forth in this Indenture, the record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture shall be determined as provided for in TIA § 316(c).

SECTION 2.14 Computation of Interest.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.15 CUSIP Number.

The Company in issuing the Notes may use a "CUSIP" number, and if it does so, the Trustee shall use the CUSIP number in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number printed in the notice or on the Notes and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee of any change in any CUSIP number.

SECTION 2.16 Special Transfer Provisions.

Each Initial Note and each Additional Note issued pursuant to an exemption from registration under the Securities Act will constitute a Transfer Restricted Note and be required to bear the Restricted Notes Legend until the expiration of the Resale Restriction Termination Date therefor, unless and until such Transfer Restricted Note is transferred or exchanged pursuant to an effective registration statement under the Securities Act. The following provisions shall apply to the transfer of a Transfer Restricted Note, subject to Section 2.16(e):

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Transfer Restricted Note (other than pursuant to Regulation S under the Securities Act) to a QIB:

(i) The Registrar shall register the transfer of a Transfer Restricted Note by a Holder to a QIB if such transfer is being made by a proposed transferor who has provided the Registrar with (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit C from the proposed transferor.

(ii) If the proposed transferee is an Agent Member and the Transfer Restricted Note to be transferred consists of an interest in the Regulation S Global Note, upon receipt by the Registrar of (x) the items required by paragraph (i) above and (y) instructions given in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the QIB Global Note in an amount equal to the principal amount of the beneficial interest in the Regulation S Global Note to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of such Regulation S Global Note in an amount equal to the principal amount of the beneficial interest in such Regulation S Global Note to be so transferred.

(b) Transfers Pursuant to Regulation S. The following provisions shall apply with respect to registration of any proposed transfer of a Transfer Restricted Note pursuant to Regulation S:

(i) The Registrar shall register any proposed transfer of a Transfer Restricted Note by a Holder pursuant to Regulation S upon receipt of (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit D hereto from the proposed transferor.

(ii) If the proposed transferee is an Agent Member and the Transfer Restricted Note to be transferred consists of an interest in the QIB Global Note, upon receipt by the Registrar of (x) the letter, if any, required by paragraph (i) above and (y) instructions in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Regulation S Global Note in an amount equal to the principal amount of the beneficial interest in the QIB Global Note to be transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the QIB Global Note in an amount equal to the principal amount of the beneficial interest in such QIB Global Note to be transferred.

(iii) Prior to the expiration of the Resale Restriction Termination Date, interests in the Regulation S Global Note may only be held through Euroclear or Clearstream.

(c) [Reserved].

(d) Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes not bearing the Restricted Notes Legend, the Registrar shall deliver Notes that do not bear the Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes bearing the Restricted Notes Legend, the Registrar shall deliver only Notes that bear the Restricted Notes Legend unless there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(e) General. By its acceptance of any Note bearing the Restricted Notes Legend, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Restricted Notes Legend and agrees that it shall transfer such Note only as provided in this Indenture. A transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note shall be subject to compliance with applicable law and the applicable procedures of the Depositary but is not subject any procedure required by this Indenture.

In connection with any proposed transfer pursuant to Regulation S or pursuant to any other available exemption from the registration requirements of the Securities Act (other than pursuant to Rule 144A), the Company and the Trustee may require the delivery of an Opinion of Counsel, other certifications or other information satisfactory to the Company and the Trustee.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to this Section 2.16.

SECTION 2.17 Issuance of Additional Notes.

The Company shall be entitled to issue Additional Notes under this Indenture that shall have identical terms as the Initial Notes, other than with respect to the date of issuance, issue price and amount of interest payable on the first interest payment date applicable thereto (and, if such Additional Notes shall be issued in the form of Transfer Restricted Notes, other than with respect to transfer restrictions, any registration rights agreement and additional interest with respect thereto); *provided* that such issuance is not prohibited by the terms of this Indenture, including Section 4.9 and Section 4.12. The Initial Notes and any Additional Notes shall be treated as a single class for all purposes under this Indenture. Any such Additional Notes that are not fungible with the Initial Notes offered hereunder for U.S. federal income tax purposes shall have a separate CUSIP, ISIN or other identifying number from such Initial Notes.

With respect to any Additional Notes, the Company shall set forth in a Board of Directors Resolution and in an Officer's Certificate, a copy of each of which shall be delivered to the Trustee, the following information:

(1) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(2) the issue price, the issue date, the CUSIP number of such Additional Notes, the first interest payment date and the amount of interest payable on such first interest payment date applicable thereto and the date from which interest shall accrue; and

(3) whether such Additional Notes shall be Transfer Restricted Notes.

ARTICLE III

REDEMPTION AND PREPAYMENT

SECTION 3.1 Notices to Trustee.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.7, it shall furnish to the Trustee, at least three (3) days (or such shorter period as is acceptable to the Trustee) before a redemption date, an Officer's Certificate setting forth the (i) section of this Indenture pursuant to which the redemption shall occur, (ii) redemption date, (iii) principal amount of Notes to be redeemed and (iv) Redemption Price.

If the Company is required to make an offer to purchase Notes pursuant to Section 4.10 or Section 4.14, it shall furnish to the Trustee, at least three (3) days (or such shorter period as is acceptable to the Trustee) before the scheduled purchase date, an Officer's Certificate setting forth the (i) section of this Indenture pursuant to which the offer to purchase shall occur, (ii) terms of the offer, (iii) principal amount of Notes to be purchased, (iv) purchase price and (v) purchase date and further setting forth a statement to the effect that (a) the Company or any one of its Subsidiaries has effected an Asset Sale and there are Excess Proceeds aggregating more than $35.0 million or (b) a Change of Control has occurred, as applicable.

The Company will also provide the Trustee with any additional information that the Trustee reasonably requests in connection with any redemption or offer.

SECTION 3.2 Selection of Notes to Be Redeemed.

Notices of redemption shall be mailed by first class mail at least ten (10) days but not more than sixty (60) days before the redemption date to each Holder of Notes to be redeemed at its registered address (or, with respect to Global Notes, delivered in accordance with the procedures of DTC), except that (1) redemption notices may be given more than 60 days prior to a redemption date if the notice is issued in connection with Sections 8.2, 8.3 or 8.8 hereof and (2) redemption notices may be given less than 10 days prior to a redemption date if the notice is issued in connection with or upon the occurrence of a Change of Control. Except for a redemption to be effected pursuant to Section 3.7, notices of redemption may not be conditional.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed on a *pro rata* basis (or as nearly pro rata as practicable), by lot or by such method as the Trustee in its sole discretion may deem fair and appropriate, unless otherwise required by law or applicable procedures of DTC or stock exchange requirements; *provided* that no Notes of $2,000 or less shall be redeemed in part. So long as the notes are represented by a Global Security registered in the name of DTC, such Notes to be redeemed shall be selected in accordance with the operational procedures of DTC and neither the Trustee or Registrar nor any of its agents shall have any responsibility for any actions taken or not taken by the Depositary.

If any Note is to be redeemed in part only, the notice of redemption that relates to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a Global Note will be made, as appropriate).

On and after the redemption date, interest will cease to accrue on Notes or portions of them called for redemption so long as the Company has deposited with the Paying Agent funds in satisfaction of the applicable Redemption Price pursuant to this Indenture and shall promptly notify the Company in writing of the Notes selected for redemption. Portions (equal to $2,000 or any integral multiples of $1,000 thereof) of the principal of the Notes may be selected for redemption so long as no partial redemption results in a Note having a principal amount of less than $2,000.

SECTION 3.3 Notice of Redemption.

Subject to the provisions of Sections 3.2 and 3.9, at least ten (10) days but not more than sixty (60) days before a redemption date, the Company shall mail or cause to be mailed by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed.

The notice shall identify the Notes to be redeemed and shall state:

(1) the redemption date;

(2) the Redemption Price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Notes to be redeemed and that, after the redemption date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(4) the name, telephone number and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(8) that, no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(9) whether the redemption is subject to one or more conditions precedent and if so, a description of such condition precedent as well as the information required pursuant to Section 3.4.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense, provided that the Company makes such request at least three (3) Business Days prior to the date by which such notice of redemption must be given to holders (unless a shorter notice period shall be satisfactory to the Trustee); *provided further* that the Company shall have delivered to the Trustee, at least thirteen (13) days prior to the redemption date (or such shorter period as is acceptable to the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in the notice as provided in the preceding paragraph. The notice mailed in the manner herein provided shall be deemed to have been duly given whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note shall not affect the validity of the proceeding for the redemption of any other Note.

If any condition precedent provided for in the notice of redemption has not been satisfied following delivery of such notice pursuant to this Section 3.3, the Company shall notify the Trustee in writing prior to the close of business one (1) Business Day prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee). Upon receipt of such notice by the Trustee, (i) the notice of redemption shall be rescinded or delayed, and the redemption of the Notes shall be rescinded or delayed as provided in such notice; and (ii) the Trustee shall deliver such notice to each Holder in the same manner in which the notice of redemption was given.

SECTION 3.4 Effect of Notice of Redemption.

Except as provided in the following sentence, once notice of redemption is mailed in accordance with Section 3.3, Notes called for redemption become irrevocably due and payable on the redemption date at the Redemption Price *plus* accrued and unpaid interest, if any, to (but not including) such date. Notwithstanding the foregoing, in connection with any redemption of Notes, any such redemption may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, consummation of any related Equity Offering or Change of Control. In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice will state that such redemption may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Company in its sole discretion) by the redemption date.

SECTION 3.5 Deposit of Redemption of Purchase Price.

On or before 11:00 a.m. (New York City time) on each redemption date, the Company shall deposit with the Trustee or with the Paying Agent (other than the Company or an Affiliate of the Company) money sufficient to pay the Redemption Price of and accrued and unpaid interest to (but not including) such redemption date, if any , on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the Redemption Price of (including any applicable premium), and accrued interest, if any, on, all Notes to be redeemed or purchased.

If Notes called for redemption are paid or if the Company has deposited with the Trustee or Paying Agent money sufficient to pay the redemption price of, and unpaid and accrued interest, if any, on, all Notes to be redeemed, on and after the redemption or purchase date, interest, if any, shall cease to accrue on the Notes or the portions of Notes called for redemption (regardless of whether certificates for such securities are actually surrendered). If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest, if any, shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case, at the rate provided in the Notes and in Section 4.1.

SECTION 3.6 Notes Redeemed in Part.

Upon surrender and cancellation of a Note that is redeemed in part, the Company shall issue and, upon the written request of an Officer of the Company, the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed portion of the Note surrendered and canceled; *provided* that each such new Note will be in a principal amount of $2,000 or integral multiples of $1,000 in excess thereof.

SECTION 3.7 Optional Redemption.

(a) On or after February 15, 2023, the Company may redeem the Notes at its option, in whole at any time or in part from time to time, upon not less than 10 nor more than 60 days' notice to the Holders, at the Redemption Prices (expressed as a percentage of the principal amount to be redeemed) set forth below, *plus* accrued and unpaid interest, if any, on the Notes to be redeemed to (but not including) the applicable redemption date if redeemed during the period indicated below:

Period	Percentage
On or after February 15, 2023	102.813%
On or after February 15, 2024	101.406%
On or after February 15, 2025 and thereafter	100.000%

(b) In addition, at any time prior to February 15, 2023, the Company may redeem the Notes at its option in whole at any time or in part from time to time, upon notice in accordance with Section 3.3, at a redemption price equal to 100% of the principal amount of the Notes redeemed *plus* the Applicable Premium as of, and accrued and unpaid interest, if any, to (but not including) the applicable redemption date.

(c) Notwithstanding the foregoing, at any time and from time to time prior to February 15, 2023, upon notice in accordance with Section 3.3, the Company may redeem in the aggregate up to 40.0% of the aggregate principal amount of the Notes (calculated after giving effect to the issuance of any Additional Notes) with an amount equal to the net cash proceeds of one or more Equity Offerings by the Company or any direct or indirect parent entity thereof, to the extent the net cash proceeds therefrom are contributed to the Company or used to purchase Capital Stock (other than Disqualified Stock) of the Company, at a redemption price (expressed as a percentage of the principal amount thereof) equal to 105.625% *plus* accrued and unpaid interest, if any, to (but not including) the redemption date; *provided*, *however*, that at least 50.0% of the original aggregate principal amount of the Notes (calculated after giving effect to the issuance of any Additional Notes of the same series) must remain outstanding after each such redemption (unless all Notes are redeemed substantially concurrently); and *provided*, *further*, that such redemption occurs within 180 days after the date on which any such Equity Offering is consummated.

(d) In addition, at any time and from time to time prior to February 15, 2023 but not more than once in any twelve-month period, the Company may redeem in the aggregate up to 10% of the aggregate principal amount of the Notes at a redemption price (expressed as a percentage of the principal amount thereof) of 103.0%, *plus* accrued and unpaid interest on the Notes, if any, to but not including the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

(e) In addition, the Company or its affiliates may acquire Notes by means other than redemption, whether by tender or exchange offer, open market purchases, negotiated transactions or otherwise, upon such terms, at such prices and with such consideration as the Company or any such affiliates may determine.

(f) Notwithstanding the foregoing, in connection with any tender offer for, or other offer to purchase, the Notes, including a Change of Control Offer or Asset Sale Offer, if Holders of not less than 90.0% in aggregate principal amount of the Notes validly tender, exchange or otherwise participate in such offer and do not withdraw such Notes in such tender offer (or other offer to purchase) and the Company, or any third party making such a tender or exchange offer (or other offer to purchase) in lieu of Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, all of the Holders of the Notes will be deemed to have consented to such tender or other offer and accordingly, the Company will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such tender offer (or other offer) expiration date, to redeem all Notes that remain outstanding following such purchase at a redemption price in cash equal to the price paid to each other Holder (excluding any early tender, incentive or similar fee) in such tender offer (or other offer to purchase), *plus*, to the extent not included in the tender offer payment (or payment pursuant to another offer to purchase), accrued and unpaid interest, if any, to the date of redemption.

(g) Any redemption of the Notes may, at the Company's discretion, be subject to one or more conditions precedent. The redemption date of any redemption that is subject to satisfaction of one or more conditions precedent may, in the Company's discretion, be delayed until such time as any or all such conditions shall be satisfied (or waived by the Company in its sole discretion), or such redemption may not occur and any notice with respect to such redemption may be modified or rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed (which may exceed 60 days from the date of the redemption notice in such case). In addition, such notice of redemption may be extended if such conditions precedent have not been satisfied or waived by the Company by providing notice to the noteholders.

SECTION 3.8 Mandatory Redemption.

Except as set forth under Sections 3.9, 4.10 and 4.14, the Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

SECTION 3.9 Offer to Purchase.

In the event that the Company shall be required to commence an Offer to Purchase pursuant to an Asset Sale Offer or a Change of Control Offer, the Company shall follow the procedures specified below.

On the Purchase Date, the Company shall purchase the aggregate principal amount of Notes required to be purchased pursuant to Section 4.10 or Section 4.14 (the "*Offer Amount*"), or if less than the Offer Amount has been tendered, all Notes tendered in response to the Offer to Purchase. Payment for any Notes so purchased shall be made in the same manner as interest payments are made. If the Purchase Date is on or after the interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest, if any, shall be payable to the Holders who tender Notes pursuant to the Offer to Purchase. The Company shall notify the Trustee at least 15 days (or such shorter period as is acceptable to the Trustee) prior to the mailing of the Offer of the Company's obligation to make an Offer to Purchase, and the Offer shall be mailed by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase.

On or before 11:00 a.m. (New York City time) on each Purchase Date, the Company shall irrevocably deposit with the Trustee or Paying Agent (other than the Company or an Affiliate of the Company) in immediately available funds the aggregate purchase price equal to the Offer Amount, together with accrued and unpaid interest to (but not including) the Purchase Date, if any, thereon, to be held for payment in accordance with the terms of this Section 3.9. On the Purchase Date, the Company shall, to the extent lawful, (i) accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Purchase, or if less than the Offer Amount has been tendered, all Notes tendered, (ii) deliver or cause the Paying Agent or Depositary, as the case may be, to deliver to the Trustee Notes so accepted and (iii) deliver to the Trustee an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.9. The Company, the Depositary or the Paying Agent, as the case may be, shall promptly (but in any case not later than three (3) Business Days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, *plus* any accrued and unpaid interest to (but not including) the Purchase Date, if any, thereon, and the Company shall promptly issue a new Note, and the Trustee, at the written request of the Company, shall authenticate and mail or deliver at the expense of the Company such new Note to such Holder, equal in principal amount to any unpurchased portion of such Holder's Notes surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof.

Other than as specifically provided in this Section 3.9, any purchase pursuant to this Section 3.9 shall be made pursuant to the provisions of Sections 3.1 through 3.6.

ARTICLE IV

COVENANTS

SECTION 4.1 Payment of Notes.

(a) The Company shall pay or cause to be paid the principal of, premium, if any, and interest, if any, on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest, if any, shall be considered paid for all purposes hereunder on the date the Paying Agent, if other than the Company or a Subsidiary thereof, holds, as of 11:00 a.m. (New York City time), money deposited by the Company in immediately available funds and designated for and sufficient to pay all such principal, premium, if any, and interest, if any, then due.

(b) The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest, if any (without regard to any applicable grace period), at the same rate to the extent lawful.

SECTION 4.2 Maintenance of Office or Agency.

The Company shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.3.

SECTION 4.3 Provision of Financial Information.

(a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Company will file with the SEC (and upon written request provide the Trustee and Holders with copies thereof without cost to each Holder, within 5 days after receipt of such request),

(1) within the time period specified in the SEC's rules and regulations for non- accelerated filers, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC;

(2) within the time period specified in the SEC's rules and regulations for non- accelerated filers (except for any delay permitted by Rule 13a-13(a) promulgated under the Exchange Act), reports on Form 10- Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC;

(3) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such reports on Form 8-K (or any successor or comparable form), except to the extent permitted to be excluded by the SEC; and

(4) subject to the foregoing, any other information, documents and other reports which the Company would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

provided, *however*, that if the Company is at any time not obligated to file or furnish such reports with or to the SEC the Company shall be permitted to make available such information to prospective purchasers, the Trustee and the Holders in the manner contemplate by the following paragraph within the time the Company would have been required to file such information with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act as provided above and shall not be required to file or furnish such reports with or to the SEC; provided, further, (i) in no event shall such financial statements, information or reports be required to comply with (v) Rule 3-10 of Regulation S-X promulgated by the SEC (or such other rule or regulation that amends, supplements or replaces such Rule 3-10, including for the avoidance of doubt, Rules 13-01 or 13-02 of Regulation S-X promulgated by the SEC), (w) Rule 3-09 of Regulation S-X (or such other rule or regulation that amends, supplements or replaces such Rule 3-09), (x) Rule 3-16 of Regulation S-X (or such other rule or regulation that amends, supplements or replaces such Rule 3-16), (y) Rule 3-05 of Regulation S-X (or such other rule or regulation that amends, supplements or replaces such Rule 3-05) or (z) any requirement to otherwise include any schedules or separate financial statements of any of the Subsidiaries of the Company, Affiliates or equity method investees, (ii) in no event shall such financial statements, information or reports be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S- K promulgated by the SEC with respect to any non-GAAP financial measures contained therein,

(b) no such financial statements, information or reports referenced under clauses (3) or (4) above shall be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations or financial position of the Company and its Restricted Subsidiaries, taken as a whole, (iv) in no event shall such financial statements or reports be required to include any information that is not otherwise similar to information included in the offering memorandum, other than with respect to information or reports provided under clause (3) above, including, for the avoidance of doubt, director and executive officer compensation information required by Item 402 of Regulation S-K or any other compensation information or any information required by Item 407 of Regulation S- K and (v) in no event shall information or reports be required to include as an exhibit copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a Form 10-K, Form 10-Q or Form 8-K except for (x) agreements evidencing material Indebtedness and (y) historical and pro forma financial statements to the extent reasonably available and, in any case with respect to pro forma financial statements, to include only pro forma revenues, EBITDA and capital expenditures in lieu thereof.

(c) In the event the Company is not required to file reports with the SEC, in addition to providing such information to the Trustee, the Company shall make available to the Holders, prospective investors, market makers affiliated with any initial purchaser of the Notes and securities analysts the information required to be provided pursuant to clauses (1), (2), (3) and (4) of this Section 4.3, by posting such information to its website or on IntraLinks or any comparable online data system or website, it being understood that the Trustee shall have no responsibility to determine if such information has been posted on any website. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(d) If the Company has designated any Subsidiary as an Unrestricted Subsidiary and if any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Company, then the annual and quarterly information required by clauses (1) and (2) of this Section 4.3 shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Company and the Restricted Subsidiaries separate from the financial condition and results of operations of such Unrestricted Subsidiaries.

(e) In the event that:

(1) the rules and regulations of the SEC permit the Company and any direct or indirect parent of the Company to report at such parent entity's level on a consolidated basis and such parent entity is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly, of the capital stock of the Company, or

(2) any direct or indirect parent of the Company is or becomes a Guarantor of the Notes, consolidating reporting at the parent entity's level in a manner consistent with that described in this Section 4.3 for the Company will satisfy this Section 4.3, and this Indenture will permit the Company to satisfy its obligations in this Section 4.3 with respect to financial information relating to the Company by furnishing financial information relating to such direct or indirect parent; provided that such financial information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such direct or indirect parent and any of its Subsidiaries other than the Company and its Subsidiaries, on the one hand, and the information relating to the Company and its Subsidiaries on a standalone basis, on the other hand.

(f) The Company will make such information available to prospective investors upon request. In addition, the Company has agreed that, for so long as any notes remain outstanding during any period when it is not subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, it will furnish to the holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(g) Notwithstanding the foregoing, the Company will be deemed to have furnished such reports referred to above to the Trustee, the holders, prospective investors, market makers and securities analysts if the Company has filed such reports with the SEC via the EDGAR filing system (or any successor thereto) and such reports are publicly available, it being understood that the Trustee shall have no responsibility to determine if such information has been posted on any website.

(h) To the extent any information is not provided within the time periods specified in this Section 4.3 and such information is subsequently provided, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default or Event of Default with respect thereto shall be deemed to have been cured.

SECTION 4.4 Compliance Certificate.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year beginning with the fiscal year ended January 1, 2022, an Officer's Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether each has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that, to his or her knowledge, each entity has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that, to his or her knowledge, no event has occurred and remains in existence by reason of which payments on account of the principal of, premium, if any, or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

SECTION 4.5 Taxes.

The Company shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency all material taxes, assessments and governmental levies, except such as are contested in good faith and by appropriate proceedings and with respect to which appropriate reserves have been taken in accordance with GAAP or where the failure to effect such payment would not have a material adverse effect on the Company.

SECTION 4.6 Stay, Extension and Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture, and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.7 Limitation on Restricted Payments.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (in each case, solely to a holder of Equity Interests in such Person's capacity as a holder of such Equity Interests), including any dividend or distribution payable in connection with any merger or consolidation (other than (A) dividends or distributions by the Company payable in Equity Interests (other than Disqualified Stock) of the Company or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock), (B) dividends or distributions by a Restricted Subsidiary payable to the Company or any other Restricted Subsidiary or (C) in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Subsidiary, *pro rata* dividends or distributions to minority stockholders of such Restricted Subsidiary (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation), *provided* that the Company or one of its Restricted Subsidiaries receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent entity of the Company held by any Person (other than by a Restricted Subsidiary), including in connection with any merger or consolidation;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness (other than (x) Indebtedness permitted under clause (7) or (8) of the definition of "*Permitted Debt,*" (y) the purchase, repurchase or other acquisition or retirement of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase, acquisition or retirement); or (z) the giving of notice of redemption with respect to transactions described in clause (2) or (3) of the second paragraph of this Section 4.7; or

(4) make any Restricted Investment;

(all such payments and other actions set forth in these clauses (1) through (4) being collectively referred to as "*Restricted Payments*"), unless, at the time of and after giving effect to such Restricted Payment:

(1) no Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) at the time of such Restricted Payment and after giving *pro forma* effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, the Company would have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the first paragraph of Section 4.9; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made (and not rescinded or returned) by the Company and its Restricted Subsidiaries after the Issue Date (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (7), (9), (10), (12), (13), (14), (15), (16), (18) and (20) of the next succeeding paragraph; *provided* that the calculation of Restricted Payments shall also exclude the amounts paid or distributed pursuant to clause (1) of the next paragraph to the extent that the declaration of such dividend or other distribution shall have previously been included as a Restricted Payment), is less than the sum, without duplication, of:

(A) an amount, not less than zero in the aggregate, equal to 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from January 1, 2021 to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit); *plus*

(B) 100% of the aggregate net cash proceeds and the fair market value of property and marketable securities received by the Company after the Issue Date from the issue or sale of (x) Equity Interests of the Company or any direct or indirect parent of the Company to the extent the proceeds are contributed to the Company (including Retired Capital Stock (as defined below) and Equity Interests issued upon exercise of options or warrants) but excluding (i) cash proceeds received from the sale of Equity Interests of the Company and, to the extent actually contributed to the Company, Equity Interests of the Company's direct or indirect parent entities to members of management, directors, consultants or independent contractors of the Company, any direct or indirect parent entity of the Company and the Subsidiaries of the Company after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph, (ii) cash proceeds received from the sale of Refunding Capital Stock (as defined below) to the extent such amounts have been applied to Restricted Payments made in accordance with clause (2) of the next succeeding paragraph, (iii) Designated Preferred Stock or amounts contributed from the issuance of Designated Preferred Stock by any direct or indirect parent entity of the Company, (iv) the Cash Contribution Amount, (v) Disqualified Stock, (vi) Excluded Contributions and (vii) Equity Interests or convertible debt securities of the Company sold to a Restricted Subsidiary) or (y) debt securities or other Indebtedness of the Company (in each case, whether issued before or after the Issue Date) that has been converted into or exchanged for Equity Interests of the Company (other than Disqualified Stock or Designated Preferred Stock or debt securities that have been converted into or exchanged for Disqualified Stock or Designated Preferred Stock); *plus*

(C) 100% of the aggregate amount of cash and the fair market value of property and marketable securities contributed to the capital of the Company after the Issue Date (other than (i) by a Restricted Subsidiary, (ii) any Excluded Contributions, (iii) any Disqualified Stock, (iv) any Refunding Capital Stock, (v) any Designated Preferred Stock, (vi) the Cash Contribution Amount and (vii) cash proceeds applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); *plus*

(D) to the extent not already included in Consolidated Net Income or EBITDA, as applicable, 100% of the aggregate amount received in cash and the fair market value of property and marketable securities after the Issue Date by means of (i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries and repayments of loans or advances which constitute Restricted Investments of the Company or its Restricted Subsidiaries or (ii) the sale (other than to the Company or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary or a dividend or other distribution from an Unrestricted Subsidiary; *plus*

(E) in the case of the (i) redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, (ii) merger or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or (iii) transfer of assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Board of Directors of the Company in good faith at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, consolidation or transfer of assets (other than to the extent such Investment constituted a Permitted Investment); *plus*

(F) the greater of $25.0 million and 25.0% of EBITDA.

The preceding provisions will not prohibit:

(1) the payment of any dividend or other distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of notice of redemption, if at the date of declaration or notice such payment would have complied with the provisions of this Indenture;

(2) the (A) redemption, repurchase or other acquisition or retirement of any Equity Interests of the Company or any direct or indirect parent entity of the Company ("*Retired Capital Stock*") or Indebtedness subordinated to the Notes in exchange for or out of the net cash proceeds of the sale (other than to a Restricted Subsidiary or the Company) of Equity Interests of the Company or contributions to the equity capital of the Company (other than from a Subsidiary or an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries) (in each case, other than Disqualified Stock and the Cash Contribution Amount) ("*Refunding Capital Stock*") so long as any such redemption, repurchase or other acquisition or retirement is 120 days after the sale or issuance of such Refunding Capital Stock; or (B) declaration and payment of dividends on the Retired Capital Stock out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary or the Company or to an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries) of Refunding Capital Stock;

(3) the defeasance, redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the sale of, new Indebtedness of the Company or a Guarantor which is incurred in compliance with Section 4.9 so long as (i) such new Indebtedness is subordinated to the Notes and any Guarantees thereof at least to the same extent as such Indebtedness subordinated to the Notes so redeemed, repurchased, acquired or retired, (ii) such new Indebtedness has a final scheduled maturity date equal to or later than 90 days after the earlier of the final scheduled maturity date of the Notes and the Subordinated Indebtedness redeemed, repurchased or otherwise acquired, (iii) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Indebtedness subordinated to the Notes being so redeemed, repurchased, acquired or retired and (iv) any such defeasance, redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness occurs within 120 days after the sale or issuance of such new Indebtedness;

(4) Restricted Payments to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (including, for these purposes, phantom or similar types of awards) of the Company or any of its direct or indirect parent entities held by any future, present or former employee, director, consultant or independent contractor of the Company, its Subsidiaries or any of its direct or indirect parent entities (or their permitted transferees, assigns, estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit or severance plan, agreement or arrangement; *provided*, *however*, that the aggregate amount of Restricted Payments made under this clause (4) does not exceed in any calendar year $15.0 million (with any unused amounts in any calendar year being carried over to the two immediately succeeding calendar years); and *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed (A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company, Equity Interests of any of its direct or indirect parent entities, in each case to members of management, directors or consultants of the Company, any of its Subsidiaries or any of its direct or indirect parent entities that occurs after the Issue Date *plus* (B) the amount of any cash bonuses otherwise payable to members of management, directors or consultants of the Company or any of its Subsidiaries or any of its direct or indirect parent entities that are foregone in return for the receipt of Equity Interests of the Company or any of its direct or indirect parent entities *plus* (C) the cash proceeds of "key man" life insurance policies received by the Company or its Restricted Subsidiaries after the Issue Date (*provided* that the Company may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any calendar year) (it being understood that the forgiveness of any debt by such Person shall not be a Restricted Payment hereunder) *less* (D) the amount of any Restricted Payments previously made pursuant to clauses (A) and (B) of this clause (4);

(5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary or any class of Preferred Stock issued by a Restricted Subsidiary, in each case, issued or incurred in accordance with this Indenture to the extent such dividends are included in the definition of "*Fixed Charges*" for such entity;

(6) (a) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Company or any of its Restricted Subsidiaries after the Issue Date, (b) the declaration and payment of dividends to a parent entity, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent entity issued after the Issue Date; *provided* that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Company from the sale of such Designated Preferred Stock; or (c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph; *provided, however*, in the case of each of clause (a) and clause (c) of this clause (6), that for the Applicable Measurement Period at the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness under the provisions of the first paragraph of Section 4.9.

(7) repurchases of Equity Interests (i) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or (ii) deemed to occur in connection with withholding to pay other taxes payable in connection with the vesting or exercise of Equity Interests or any other equity award held or beneficially owned by any future, present or former employee, director, officer, manager or consultant;

(8) (a) the payment of dividends on the Company's common stock (or the payment of dividends to any direct or indirect parent entity of the Company, as the case may be, to fund the payment by any such parent company of the Company of dividends on such entity's common stock) in an aggregate amount per annum not to exceed 6.0% of Market Capitalization or (b) in lieu of all or a portion of the dividends permitted by clause (a), any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of the Company's Equity Interests (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any direct or indirect parent company of the Company to fund the payment by such direct or indirect parent company of the Company of dividends on such entity's Equity Interests) for aggregate consideration that, when taken together with dividends permitted by clause (a), does not exceed the amount contemplated by clause (a);

(9) Restricted Payments that are made with Excluded Contributions;

(10) other Restricted Payments in an amount not to exceed the greater of $25.0 million and 25.0% of EBITDA;

(11) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness or Disqualified Stock pursuant to provisions similar to those set forth in Sections 4.10 and 4.14; *provided* that a Change of Control Offer or Asset Sale Offer, as applicable, has been made and all Notes tendered by holders of the Notes in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(12) the declaration and payment of dividends to, or the making of loans to, a direct or indirect parent entity of the Company in amounts required for such Person to pay, without duplication:

(A) franchise taxes and other fees, taxes and expenses required to maintain its corporate existence;

(B) so long as the Company is a member of a group filing a consolidated combined or unitary income tax return with such Person as the parent of such group, taxes imposed on or measured by income (however denominated) to the extent such taxes are attributable to the income of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received from the Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of the Unrestricted Subsidiaries, *provided*, *however*, that in each case the amount of such payments in any fiscal year does not exceed the amount of income taxes that each of the Company, the relevant Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) would be required to pay for such fiscal year were each of the Company, its Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) to pay such taxes as a stand-alone taxpayer (*"Permitted Tax Distributions*");

(C) customary salary, bonus, severance, indemnification obligations and other benefits payable to officers, directors, consultants, independent contractors, and employees of such direct or indirect parent entity of the Company to the extent such salaries, bonuses, severance, indemnification obligations and other benefits are attributable to the ownership or operation of the Company and its Restricted Subsidiaries;

(D) general corporate overhead and operating expenses for such direct or indirect parent entity of the Company to the extent such expenses are attributable to the ownership or operation of the Company and its Restricted Subsidiaries; and

(E) reasonable fees and expenses incurred in connection with any successful or unsuccessful debt or equity offering or other financing transaction by such direct or indirect parent entity of the Company.

(13) Restricted Payments after the Issue Date in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company or any direct or indirect parent entity of the Company; *provided*, *however*, that any such cash payment shall not be for the purpose of evading the limitation of this Section 4.7 (as determined in good faith by the Board of Directors of the Company);

(14) dividends or other distributions of Capital Stock of Unrestricted Subsidiaries or distributions of Indebtedness owed to the Company or any direct or indirect parent of the Company by any Unrestricted Subsidiary;

(15) any Restricted Payment used to fund or consummate the Transactions and the fees and expenses related thereto;

(16) Restricted Payments to any direct or indirect parent entity to finance, or to any direct or indirect parent entity for the purpose of paying to any other direct or indirect parent entity to finance, any Investment that, if consummated by the Company, would be a Permitted Investment; *provided* that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such parent entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Company or any Restricted Subsidiary or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 5.1) of the Person formed or acquired into the Company or any Restricted Subsidiary in order to consummate such acquisition or Investment, in each case, in accordance with the requirements of Section 4.17;

(17) [reserved];

(18) any Restricted Payment; provided that on a *pro forma* basis after giving effect to such Restricted Payment, the Secured Leverage Ratio would be equal to or less than 2.25 to 1.00;

(19) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness consisting of Acquired Debt;

(20) mandatory redemptions of Disqualified Stock of the Company or any of its Restricted Subsidiaries;

(21) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, merger or transfer of all or substantially all of the assets of the Company and its Restricted Subsidiaries, taken as a whole, that complies with the covenant described under Section 5.1.

(22) (i) the conversion or exchange of any Permitted Convertible Indebtedness in accordance with its terms into or for shares of Equity Interests (other than Disqualified Stock) of the Company and the making of a payment of cash in lieu of fractional shares of the Company's Equity Interests (other than Disqualified Stock) deliverable upon any such conversion or exchange, (ii) the delivery of cash in connection with any conversion or exchange of any Permitted Convertible Indebtedness in an aggregate amount since the date of this Indenture governing such Permitted Convertible Indebtedness not to exceed the sum of (x) the principal amount of such Permitted Convertible Indebtedness, as applicable, and (y) the amount of any payments required to be made to the Company or any of its Subsidiaries upon the exercise, settlement, termination or unwind of any related Permitted Bond Hedge Transaction substantially concurrently with, or a commercially reasonable period of time before or after, the settlement date for the exchange or conversion of such relevant Permitted Convertible Indebtedness or (iii) payments of interest under any Permitted Convertible Indebtedness;

(23) any payments in connection with the repurchase, exchange or inducement of the conversion or exchange, as the case may be, of Permitted Convertible Indebtedness by delivery of shares of Company's common stock and/or a different series of Permitted Convertible Indebtedness (which series (x) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted and (y) has terms, conditions and covenants (other than, for the avoidance of doubt, interest rate, conversion rate, conversion price and conversion rate adjustment provisions) that are no less favorable to Company than the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted (as determined by the Company in good faith)) (any such series of Permitted Convertible Indebtedness, "*Refinancing Convertible Notes*") and/or by payment of cash (in an amount that does not exceed the proceeds received by the Company from the substantially concurrent issuance of shares of Company's common stock and/or Refinancing Convertible Notes plus the net cash proceeds, if any, received by the Company pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso); *provided* that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted, the Company shall (and, for the avoidance of doubt, shall be permitted hereunder to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Permitted Convertible Indebtedness that are so repurchased, exchanged or converted; and

(24) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Company's Capital Stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in Capital Stock upon any early termination thereof.

provided, *however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (9) and (18) above, no Event of Default, shall have occurred and be continuing or would occur as a consequence thereof.

For purposes of determining compliance with this Section 4.7, in the event that a proposed Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in the preceding clauses (1) through (24) above and/or one or more of the clauses contained in the definition of "Permitted Investments," or is entitled to be made pursuant to the first paragraph of this Section 4.7 the Company will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment or Investment (or portion thereof) among such clauses (1) through (24) and/or such first paragraph and/or one or more of the clauses contained in the definition of "Permitted Investments," in a manner that otherwise complies with this Section 4.7.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this Section 4.7 will be determined in good faith by the Board of Directors of the Company.

The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the second to last sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding investments by the Company and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the second paragraph of the definition of "*Investments.*" Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time under this Section 4.7 or the definition of "Permitted Investments" and if such Subsidiary otherwise meets the definition of an "Unrestricted Subsidiary."

If the Company or a Restricted Subsidiary makes a Restricted Payment which at the time of the making of such Restricted Payment would in the good faith determination of the Company be permitted under the provisions of this Indenture, such Restricted Payment shall be deemed to have been made in compliance with this Indenture notwithstanding any subsequent adjustments made in good faith to the Company's financial statements affecting Consolidated Net Income or EBITDA of the Company for any period.

For the avoidance of doubt, this Section 4.7 shall not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of the Company or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Indenture.

SECTION 4.8 Limitation on Dividends and Other Payment Restrictions Affecting Subsidiaries.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(2) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect (x) pursuant to the New Revolving Credit Facility or related documents or (y) on the Issue Date, including, without limitation, pursuant to Indebtedness in existence on the Issue Date;

(2) this Indenture, the Notes, the Security Documents and Guarantees;

(3) Capitalized Lease Obligations, purchase money obligations or other obligations that, in each case, impose restrictions of the nature discussed in clause (3) above in the first paragraph of this Section 4.8 on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the Company or any Restricted Subsidiary in existence at the time of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

(6) contracts for the sale of assets (including sale-lease back agreements), including without limitation, customary restrictions with respect to a Subsidiary pursuant to an agreement that has been entered into for the sale or disposition of the Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness and Liens otherwise permitted to be incurred pursuant to Sections 4.9 and 4.12 that limits the right of the debtor to dispose of the assets securing such Indebtedness;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or other restrictions on cash or deposits constituting Permitted Liens;

(9) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(10) customary provisions contained in leases, subleases, licenses, sublicensor asset sale agreements and other agreements, including with respect to intellectual property and other agreements;

(11) other Indebtedness or Preferred Stock, in each case, that is incurred subsequent to the Issue Date pursuant to Section 4.9; *provided*, that (A) in the good faith judgment of the Board of Directors of the Company, any such encumbrance or restriction contained in such Indebtedness shall not prohibit (except upon a default or event of default thereunder) the payment of dividends in an amount sufficient, as determined by the Board of Directors of the Company in good faith, to make scheduled cash payments on the Notes when due or (B) the encumbrances and restrictions in such Indebtedness, Disqualified Stock or Preferred Stock either are not materially more restrictive taken as a whole than those contained in the New Revolving Credit Facility or the Notes as in effect on the Issue Date or generally represent market terms at the time of incurrence or issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries; and

(12) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) of the first paragraph above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (11) above; *provided* that the encumbrances or restrictions imposed by such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Board of Directors of the Company, not materially more restrictive than encumbrances and restrictions contained in such predecessor agreements and do not affect the Company's and the Guarantors' ability, taken as a whole, to make payments of interest and scheduled payments of principal in respect of the Notes, in each case as and when due.

For purposes of determining compliance with this Section 4.8, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock will not be deemed a restriction on the ability to make distributions on Capital Stock and (2) the subordination of loans or advances made to the Company or a Restricted Subsidiary to other Indebtedness incurred by the Company or any such Restricted Subsidiary will not be deemed a restriction on the ability to make loans or advances.

SECTION 4.9 Limitation on Incurrence of Debt and Issuance of Preferred Stock.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively "*incur*") any Indebtedness (including Acquired Debt) and will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided*, *however*, that the Company and any Restricted Subsidiary may incur Indebtedness and any Restricted Subsidiary may issue Preferred Stock (including Acquired Debt) if either (x) the Fixed Charge Coverage Ratio of the Company and its Subsidiaries (on a consolidated combined basis) for the Applicable Measurement Period would have been at least 2.0 to 1.0 determined on a *pro forma basis* (including a *pro forma* application of the net proceeds therefrom) or (y) the Consolidated Leverage Ratio for the Applicable Measurement Period would have been equal to or less than 3.5 to 1.00, as if the additional Indebtedness had been incurred or Preferred Stock had been issued, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period; *provided*, *however*, that the foregoing limitation shall not apply to Indebtedness of any Person that becomes a Restricted Subsidiary in connection with an acquisition or any other Investment not prohibited by the provisions of Section 4.7 (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Company or a Restricted Subsidiary) if such Indebtedness is outstanding prior to such Person becoming a Restricted Subsidiary and to the extent such Indebtedness is not incurred in contemplation of such acquisition or Investment.

The first paragraph of this Section 4.9 will not prohibit the incurrence of any of the following (collectively, "*Permitted Debt*"):

(1) the incurrence by the Company or a Restricted Subsidiary of Indebtedness under the Credit Facilities together with the incurrence by the Company or any Restricted Subsidiary of the guarantees thereunder and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) and any refinancing thereof, up to an aggregate principal amount not to exceed the greater of (i) $35.0 million and (ii) 35.0% of EBITDA of the Company for the Applicable Measurement Period;

(2) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes (including any Guarantee thereof);

(3) any Indebtedness of the Company and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) or (2));

(4) Indebtedness (including Capitalized Lease Obligations and purchase money obligations), Disqualified Stock and Preferred Stock incurred by the Company or any Restricted Subsidiary to finance the purchase, lease, construction, installation, repair, expansion or improvement of property (real or personal and including, for the avoidance of doubt, intellectual property), plant or equipment or other fixed or capital assets used or useful in a Permitted Business (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness then outstanding and incurred pursuant to this clause (4) does not exceed the greater of (x) $35.0 million and (y) 35.0% of EBITDA;

(5) Indebtedness incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit or similar instruments issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; *provided*, *however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 60 days following such drawing or incurrence;

(6) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn-outs, seller financing or similar obligations, in each case incurred or assumed in connection with the disposition or acquisition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided*, *however*, that the maximum assumable liability in respect of all such Indebtedness incurred with respect to any disposition shall at no time exceed the gross proceeds including noncash proceeds (the fair market value of such noncash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Company and any Restricted Subsidiaries in connection with a disposition;

(7) Indebtedness of the Company owed to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owed to and held by the Company or any other Restricted Subsidiary; *provided*, *however*, that (A) any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (except to the Company or a Restricted Subsidiary) shall be deemed, in each case, to constitute the incurrence of such Indebtedness by the issuer thereof and (B) if the Company or a Guarantor is the obligor on such Indebtedness, such Indebtedness is expressly subordinated in right of payment to all obligations of the Company or such Guarantor with respect to the Notes;

(8) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or a Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or a Restricted Subsidiary) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(9) Hedging Obligations of the Company or any Restricted Subsidiary (excluding Hedging Obligations entered into for speculative purposes);

(10) obligations in respect of self-insurance and performance and surety bonds, appeal bonds and other similar types of bonds and performance guarantees statutory, export or import indemnities, customs and completion guarantees (not for borrowed money) and similar obligations provided by the Company or any Restricted Subsidiary or obligations in respect of letters of credit or similar instruments related thereto, in each case in the ordinary course of business;

(11) Indebtedness of the Company or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary issued to the Company or another Restricted Subsidiary (which, if issued by a Guarantor, shall only be issued to another Guarantor or the Company) not otherwise permitted hereunder in an aggregate principal amount or liquidation preference which, when aggregated with the principal amount and liquidation preference of all other Indebtedness and Preferred Stock then outstanding and incurred pursuant to this clause (11) does not at any one time outstanding exceed the greater of $40.0 million and 40.0% of EBITDA (it being understood that any Indebtedness or Preferred Stock incurred pursuant to this clause (11) shall cease to be deemed incurred or outstanding for purposes of this clause (11) but shall be deemed incurred pursuant to the first paragraph of this Section 4.9 from and after the first date on which the Company or such Restricted Subsidiary could have incurred or issued such Indebtedness or Preferred Stock under the first paragraph of this Section 4.9);

(12) any guarantee by the Company or any Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by the Company or such Restricted Subsidiary is permitted under the terms of this Indenture; *provided* that if such Indebtedness is by its express terms subordinated in right of payment to the Notes or the Guarantee of such Restricted Subsidiary, as applicable, any such guarantee of such Guarantor with respect to such Indebtedness shall be subordinated in right of payment to the Notes or such Guarantee with respect to the Notes substantially to the same extent as such Indebtedness is subordinated to the Notes or the Guarantee of such Restricted Subsidiary, as applicable;

(13) the incurrence by the Company or any Restricted Subsidiary of Indebtedness or the issuance of Preferred Stock by a Restricted that serves to refund, replace, renew, extend, defease or refinance (collectively, "refinance" with "refinances," "refinanced" and "refinancing" having a correlative meaning) any Indebtedness or Preferred Stock of the Company or any of its Restricted Subsidiaries, incurred or issued as permitted under the first paragraph of this Section 4.9 and clauses (2),(3), (4), and (11) above, this clause (13) and clauses (14),(17), (19), (22), (32) and (36) below (provided that any amounts incurred under this clause (13) as Refinancing Indebtedness (as defined below) of clauses (4) and (11) above and clauses (22) and (32) below, shall reduce the amount available under such clause so long as the Refinancing Indebtedness remains outstanding) or any Indebtedness issued to so refund or refinance such Indebtedness including additional Indebtedness incurred to pay accrued but unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, and fees (including costs and expenses) in connection therewith (the "*Refinancing Indebtedness*") prior to its respective maturity; *provided*, *however*, that such Refinancing Indebtedness (A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness or Preferred Stock being refinanced, (B) to the extent such Refinancing Indebtedness refinances Indebtedness subordinated or *pari passu* to the Notes or the Guarantees, such Refinancing Indebtedness is subordinated or *pari passu* to the Notes or the Guarantees, at least to the same extent as the Indebtedness being refinanced or refunded, and (C) shall not include (x) Indebtedness or Preferred Stock of a Subsidiary that is not a Guarantor that refinances Indebtedness or Preferred Stock of the Company or a Guarantor or (y) Indebtedness or Preferred Stock of the Company or a Restricted Subsidiary that refinances Indebtedness or Preferred Stock of an Unrestricted Subsidiary, (D) shall not be in a principal amount in excess of the principal amount of, premium, if any, accrued interest on, and related fees and expenses of, the Indebtedness being refunded or refinanced and (E) shall not have a stated maturity date that is earlier than the earlier of the maturity date of the Notes and the maturity of the Indebtedness being refinanced; *provided* that clauses (A) and (E) will not apply to any refunding or refinancing of secured Indebtedness;

(14) Indebtedness or Preferred Stock of (x) the Company or any Restricted Subsidiary incurred or issued to finance an acquisition or (y) Persons that are acquired by the Company or any Restricted Subsidiary or are merged, consolidated or amalgamated with or into the Company or any Restricted Subsidiary or from whom the Company acquires all or substantially all of such Person's assets in accordance with the terms of this Indenture (whether or not such Indebtedness or issuance of Preferred Stock is incurred or issued in contemplation of such acquisition, merger, consolidation or amalgamation); provided that after giving pro forma effect to such incurrence of Indebtedness described in the preceding clauses (x) and (y), either: (A) (i) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of this Section 4.9 or (ii) the Fixed Charge Coverage Ratio would be greater than such Fixed Charge Coverage Ratio immediately prior to such acquisition or merger, consolidation or amalgamation or (B) (i) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in the first paragraph of this Section 4.9 or (ii) the Consolidated Leverage Ratio would be equal to or less than such Consolidated Leverage Ratio immediately prior to such acquisition or merger, consolidation or amalgamation;

(15) (a) Indebtedness arising from the honoring by a bank or financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and (b) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business or consistent with past practice of the Company and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Company and its Restricted Subsidiaries;

(16) Indebtedness of the Company or any of its Restricted Subsidiaries supported by a letter of credit, bank guarantee or other instrument issued pursuant to any Credit Facility in a principal amount not in excess of the stated amount of such letter of credit, bank guarantee or other instrument;

(17) COVID-19 Relief Funds;

(18) Indebtedness consisting of promissory notes issued by the Company or any Guarantor to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Company or any of its direct or indirect parent entities permitted by Section 4.7;

(19) Contribution Indebtedness;

(20) Indebtedness of the Company or any Restricted Subsidiary to the extent the proceeds of such Indebtedness are deposited and used immediately to defease the Notes as set forth in Sections 8.2, 8.3 and 8.8;

(21) Indebtedness of the Company or any Restricted Subsidiary consisting of the financing of insurance premiums in the ordinary course of business;

(22) Indebtedness of any Non-Guarantor Subsidiary; *provided*, *however*, that the aggregate principal amount of all Indebtedness incurred and then outstanding under this clause (22) does not exceed the greater of (x) $25.0 million and (y) an amount equal to 25.0% of EBITDA;

(23) Indebtedness due to any landlord in connection with the financing by such landlord of leasehold improvements;

(24) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(25) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(26) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(27) Indebtedness representing deferred compensation or other similar arrangements incurred by the Company or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Transactions, any acquisition or any Permitted Investment;

(28) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any Investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Indenture;

(29) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(30) Indebtedness incurred by the Company or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

(31) [reserved];

(32) Indebtedness, Disqualified Stock or Preferred Stock of the Company or any of its Restricted Subsidiaries incurred or issued to finance, or assumed in connection with, an acquisition or Investment in a principal amount not to exceed the greater of (x) $30.0 million and (y) 30.0% of EBITDA of the Company together with all other outstanding Indebtedness or Preferred Stock issued under this clause (32) (it being understood that any Indebtedness or Preferred Stock incurred pursuant to this clause (32) shall cease to be deemed incurred or outstanding for purposes of this clause (32) but shall be deemed incurred pursuant to the first paragraph of this Section 4.9 from and after the first date on which the Company or such Restricted Subsidiary could have incurred or issued such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this Section 4.9;

(33) Indebtedness in the form of Capitalized Lease Obligations arising out of any sale and lease-back transaction;

(34) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business or consistent with past practice;

(35) unfunded pension fund and other employee benefits plan obligations and liabilities incurred in the ordinary course of business or consistent with past practice; and

(36) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (36) above.

For purposes of determining compliance with this Section 4.9, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (36) above, or is entitled to be incurred pursuant to the first paragraph of this Section 4.9, the Company will be permitted to divide and classify and later reclassify such item of Indebtedness in any manner that complies with this Section 4.9, and such item of Indebtedness will be treated as having been incurred pursuant to only one of such categories. Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this Section 4.9 and Section 4.12. Notwithstanding the foregoing, Indebtedness under the New Revolving Credit Facility outstanding on the Issue Date will be deemed to have been incurred on such date in reliance on the exception provided by clause (1) of the definition of "*Permitted Debt*." Additionally, all or any portion of any item of Indebtedness may later be reclassified and/or re-divided as having been incurred pursuant to the first paragraph of this Section 4.9 or under any category of Permitted Debt described in clauses (1) through (36) above so long as such Indebtedness is permitted to be incurred pursuant to such provision at the time of reclassification.

For purposes of determining compliance with any United States dollar restriction on the incurrence of Indebtedness where the Indebtedness incurred is denominated in a different currency, the amount of such Indebtedness will be the United States Dollar Equivalent determined on the date of the incurrence of such Indebtedness; *provided*, *however*, that if any such Indebtedness denominated in a different currency is subject to a currency agreement with respect to United States dollars covering all principal, premium, if any, and interest, if any, payable on such Indebtedness, the amount of such Indebtedness expressed in United States dollars will be as provided in such currency agreement. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebtedness being refinanced will be the United States Dollar Equivalent of the Indebtedness being refinanced, except to the extent that (1) such United States Dollar Equivalent was determined based on a currency agreement, in which case the refinancing Indebtedness will be determined in accordance with the preceding sentence, or (2) the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the United States Dollar Equivalent of such excess will be determined on the date such refinancing Indebtedness is incurred. At the time of incurrence, the Company will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first paragraph of this Section 4.9 and clauses (1) through (36) of the definition of Permitted Debt without giving pro forma effect to the Indebtedness Incurred pursuant to such paragraph or clauses (1) through (36) of the definition of Permitted Debt when calculating the amount of Indebtedness that may be incurred pursuant to the first paragraph of this Section 4.9. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 4.9. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided*, that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 4.9.

In the event that the Company or a Restricted Subsidiary enters into or increases commitments under a credit facility, the Fixed Charge Coverage Ratio, Consolidated Leverage Ratio and the Secured Leverage Ratio for borrowings and reborrowings thereunder (and including issuance and creation of letters of credit and bankers' acceptances thereunder) compliance with this Section 4.9 will be determined on the date of such credit facility or such increase in commitments (assuming that the full amount thereof has been borrowed as of such date), and, if such Fixed Charge Coverage Ratio, Consolidated Leverage Ratio and the Secured Leverage Ratio, as applicable, test is satisfied with respect thereto at such time, any borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers' acceptances thereunder) will be permitted under this Section 4.9 irrespective of the Fixed Charge Coverage Ratio, Consolidated Leverage Ratio and the Secured Leverage Ratio, as applicable, at the time of any borrowing or reborrowing (or issuance or creation of letters of credit or bankers' acceptances thereunder) (the committed amount permitted to be borrowed or reborrowed (and the issuance and creation of letters of credit and bankers' acceptances) on a date pursuant to the operation of this paragraph shall be the "Reserved Indebtedness Amount" as of such date for purposes of the Fixed Charge Coverage Ratio, Secured Leverage Ratio or the Consolidated Leverage Ratio, as applicable).

This Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral or because it is guaranteed by other obligors.

SECTION 4.10 Asset Sales.

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or such Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the fair market value (as determined at the time of contractually agreeing to such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration received in the Asset Sale, by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents or Replacement Assets.

For purposes of clause (2) above, the amount of (i) any liabilities (as shown on the Company's or the applicable Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Company or any Restricted Subsidiary (other than liabilities in excess of $10.0 million that are by their terms subordinated to the Notes or the Guarantees) that are assumed by the transferee of any such assets or are terminated, cancelled or otherwise cease to be obligations of the Company in connection with such Asset Sale and, in each case from which the Company and all Restricted Subsidiaries have been validly released by all creditors in writing, (ii) any securities or other obligations or assets received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or Restricted Subsidiary into cash (to the extent of the cash received) within 270 days following the closing of such Asset Sale, (iii) any asset described in clause (3) below and (iv) any Designated Noncash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Sale having an aggregate fair market value (as determined in good faith by the Board of Directors of the Company), taken together with all other Designated Noncash Consideration received pursuant to this clause (iv) that is at that time outstanding, not to exceed the greater of (x) $15.0 million and (y) an amount equal to 15.0% of EBITDA of the Company on the date on which such Designated Noncash Consideration is received (with the fair market value of each item of Designated Noncash Consideration being measured at the Company's option either at the time of contractually agreeing to such Asset Sale or at the time received without giving effect to subsequent changes in value), shall be deemed to be cash for purposes of this Section 4.10.

Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Company (or, if applicable, the Restricted Subsidiary) may apply those Net Proceeds at its option in one or more of the following manners:

(1) to reduce the Notes Obligations, Credit Facilities or other Pari Passu Lien Obligations (other than Notes Obligations); *provided* that if the Company or any Guarantor shall so reduce Pari Passu Lien Obligations (other than Credit Facilities), the Company or such Guarantor shall equally and ratably reduce Obligations under the Notes by, at their option (i) redeeming Notes as provided under Section 3.7, (ii) purchasing Notes through open-market purchases or (iii) by making an offer (in accordance with the procedures set forth herein for an Asset Sale Offer) to all holders of the Notes to purchase their Notes at a purchase price equal to 100% of the principal amount thereof, *plus* the amount of accrued but unpaid interest, if any, on the principal amount of Notes to be repurchased to the date of repurchase;

(2) to repay Indebtedness of Non-Guarantor Subsidiaries other than Indebtedness owed to the Company or another Restricted Subsidiary;

(3) (x) to make capital expenditures or (y) to purchase or make an investment in (A) any one or more businesses; *provided* that such investment in any business is in the form of the acquisition of Capital Stock and it results in the Company or a Restricted Subsidiary owning an amount of the Capital Stock of such business such that such business constitutes a Restricted Subsidiary, (B) properties, or (C) any other assets that, in the case of each of clauses (A), (B) and (C), are (i) used or useful in a Similar Business or (ii) replace the businesses, properties and assets that are the subject of such Asset Sale; *provided* that if, during such 365-day period, the Company or a Restricted Subsidiary enters into a definitive binding agreement committing it to apply such Net Proceeds in accordance with the requirements of clause (3) or (4) of this paragraph after such 365th day, such 365-day period will be extended with respect to the amount of Net Proceeds so committed for a period not to exceed 180 days until such Net Proceeds are required to be applied in accordance with such agreement (or, if earlier, until termination of such agreement); and/or

(4) any combination of the foregoing;

provided, in the case of clause (1) or (2) above, (i) if an offer to purchase any Indebtedness of the Company or any Restricted Subsidiary is made, such amount will be deemed repaid to the extent of the amount of such offer, whether or not accepted by the holders of such Indebtedness, and no Net Proceeds from the applicable Asset Sale in the amount of such offer will be deemed to exist following such offer, and (ii) if the holder of any Indebtedness of a Restricted Subsidiary of the Company declines the repayment of such Indebtedness owed to it from such Net Proceeds such amount will be deemed repaid to the extent of the declined Net Proceeds.

Pending the final application of any Net Proceeds, the Company or the applicable Restricted Subsidiary may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by this Indenture. Any Net Proceeds from an Asset Sale not applied or invested in accordance with the preceding paragraph within the time periods set forth above shall constitute "*Excess Proceeds.*" When the aggregate amount of Excess Proceeds exceeds $35.0 million, the Company or the applicable Restricted Subsidiary will make an offer (an "*Asset Sale Offer*") to all holders of the Notes and such other Pari Passu Lien Obligations that contain provisions similar to those set forth in this Section 4.10 with respect to offers to purchase with the proceeds of sales of assets to purchase, on a *pro rata* basis, the maximum principal amount of the Notes and such other Pari Passu Lien Obligations that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest, if any, to (but not including) the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company or the applicable Restricted Subsidiary may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds required to purchase Notes above, the Notes to be purchased will be selected on a *pro rata* basis and in accordance with DTC procedures, as applicable. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds hereunder will be reset at zero. To the extent Excess Proceeds exceed the outstanding aggregate principal amount of the Notes (and, if required by the terms thereof, all Indebtedness that ranks *pari passu* with the Notes), the Company need only make an Asset Sale Offer up to the outstanding aggregate principal amount of Notes (and any such Indebtedness that ranks *pari passu* with the Notes), and any additional Excess Proceeds will not be subject to this Section 4.10 and will be permitted to be used for any purpose otherwise permitted hereunder in the Company's discretion.

The Company may, at its option, satisfy the foregoing obligations with respect to any Net Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Proceeds prior to the date required by this Indenture with respect to all or a part of the Net Proceeds. An Asset Sale Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, Notes and/or Guarantees. The provisions under this Indenture relative to the Company's obligations to make an offer to repurchase the Notes as a result of an Asset Sale may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

The Company or the applicable Restricted Subsidiary will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.10, the Company or the applicable Restricted Subsidiary will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.10 by virtue of such conflict.

SECTION 4.11 Limitation on Transactions with Affiliates.

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, assign, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "*Affiliate Transaction*") involving an aggregate consideration in excess of $15.0 million, unless:

(1) the Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or Restricted Subsidiary with an unrelated Person or, if in the good faith judgment of the Company, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Company or such Restricted Subsidiary from a financial point of view and when such transaction is taken in its entirety; and

(2) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $40.0 million, a majority of the Board of Directors of the Company have determined in good faith that the criteria set forth in the immediately preceding clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors of the Company;

provided that any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause (2) of this Section 4.11 if such Affiliate Transaction is approved by a majority of the Disinterested Directors of the Company, if any.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

(1) any transaction between or among (a) the Company, a Restricted Subsidiary or joint venture or similar entity or (b) the Company and any Person that becomes a Restricted Subsidiary as a result of such transaction (including by way of a merger, consolidation or amalgamation);

(2) Restricted Payments and Permitted Investments permitted under this Indenture;

(3) the payment of reasonable compensation and fees and out of pocket expenses to, and indemnities provided on behalf of (and entering into related agreements with) current or former officers, directors, employees, independent contractors or consultants of the Company, any of its direct or indirect parent entities, or any Restricted Subsidiary, as determined in good faith by the Board of Directors of the Company or senior management thereof;

(4) transactions in which the Company or any Restricted Subsidiary delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable, when taken as a whole, to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm's length basis;

(5) payments or loans (or cancellations of loans) to employees, consultants or independent contractors of the Company or any of its direct or indirect parent entities or any Restricted Subsidiary which are approved by the Board of Directors of the Company and which are otherwise permitted under this Indenture, but in any event not to exceed $10.0 million in the aggregate outstanding at any one time;

(6) payments made or performance under any agreement as in effect on the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect in the good faith judgment of the Board of Directors of the Company to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(7) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services (including the Company and its Subsidiaries and joint ventures), in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Company or its Restricted Subsidiaries or are on terms at least as favorable as would reasonably have been entered into at such time with an unaffiliated party;

(8) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Permitted Holder, any direct or indirect parent entity, any director, officer, employee or consultant of the Company, its direct or indirect parent entities or its Subsidiaries or any other Affiliates of the Company (other than a Subsidiary) and the granting of registration rights in connection therewith;

(9) any (a) employment, severance and similar agreements entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business, (b) subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) employee compensation, equity or similar incentive, and other benefit plans or arrangements, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(10) (a) without duplication, Permitted Tax Distributions, (b) transactions undertaken in good faith (as certified by the Company in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Company and its Subsidiaries (and not for the purpose of circumventing any covenant set forth herein and which are not materially adverse to the holders of the Notes) and (c) tax sharing agreements, tax groupings and other similar arrangements for the payment of taxes or the surrender or reallocation of taxes or tax reliefs among direct and indirect parent companies of the Company or among Permitted Holders, the Company and its Restricted Subsidiaries;

(11) any transaction effected in connection with the Transactions;

(12) (x) the purchase of or investment in debt, equity or other securities of the Company or any of its Restricted Subsidiaries in primary issuances on the same terms as are applicable to non-Affiliates so long as not more than 50% of such issuance is to an Affiliate and (y) purchases or other acquisitions (other than from the Company or any of its Restricted Subsidiaries) of debt or securities of the Company or any of its Restricted Subsidiaries by Affiliates in bona fide secondary transactions and, in the case of each of clauses (x) and (y), payments made to an Affiliate in respect of such securities;

(13) [reserved];

(14) transactions with a Person that is an Affiliate of the Company arising solely because the Company or any Restricted Subsidiary owns any Equity Interest in, or controls, such Person;

(15) any lease or sublease entered into between the Company or any Restricted Subsidiary, as lessee or sublessee and any Affiliate of the Company, as lessor or sub- lessor, which is approved by the Board of Directors of the Company in good faith;

(16) pledges of Equity Interests of Unrestricted Subsidiaries;

(17) intellectual property licenses entered into in the ordinary course of business or consistent with past practice;

(18) any transition services arrangement, supply arrangement or similar arrangements entered into in connection with or in contemplation of the disposition of assets or Equity Interests in any Restricted Subsidiary or Investment permitted by the covenant described under Section 4.10 entered into with any successor, in each case, that the Company determines in good faith is either fair to the Company or otherwise on customary terms for such type of arrangements in connection with similar transactions;

(19) an agreement between a Person and an Affiliate of such Person existing at the time such Person is acquired by, or merged into, the Company or a Restricted Subsidiary and not entered into in contemplation of such acquisition or merger; *provided* that such acquisition or merger complied with this Section 4.11; and

(20) transactions between the Company or any Restricted Subsidiary and any other Person that would constitute an Affiliate Transaction solely because a director of such other Person is also a director of the Company or any direct or indirect parent of the Company.

Notwithstanding the foregoing, the Trustee shall have no obligation to monitor compliance with, nor be responsible or liable for any determination made or not made by the Company, pursuant to this Section 4.11.

SECTION 4.12 Limitation on Liens.

The Company will not, and will not permit any Guarantor to, directly or indirectly, create, incur or assume any Lien (each a "*Subject Lien*") that secures obligations under any Indebtedness, unless, with respect to Liens on property not constituting Collateral, (a) in the case of Liens securing Indebtedness subordinated to the Notes or the Guarantees, the Notes and any related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens or (b) in all other cases, the Notes and any related Guarantees are equally and ratably secured, *provided* that none of the foregoing limitations shall apply to Permitted Liens.

Any Lien created for the benefit of the Holders pursuant to the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Subject Lien.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "*Increased Amount*" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of the Company, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (4) of the definition of Indebtedness.

SECTION 4.13 [Reserved].

SECTION 4.14 Offer to Purchase upon Change of Control.

If a Change of Control occurs, unless the Company has at such time given notice of redemption pursuant to Section 3.7 with respect to all outstanding Notes, each holder of Notes will have the right to require the Company to repurchase all or any part (equal to $1,000 or an integral multiple of $1,000) of that holder's Notes pursuant to a Change of Control Offer (as defined below) on the terms set forth herein at a purchase price in cash equal to 101.0% of the principal amount thereof, *plus* accrued and unpaid interest, if any, to (but not including) the date of purchase (the "*Change of Control Payment*"). Within 30 days following any Change of Control, except to the extent the Company has exercised its right to redeem the Notes under Section 3.7 with respect to all outstanding Notes, the Company will deliver a notice (a "*Change of Control Offer*") to each holder at its registered address or otherwise in accordance with the procedures of DTC, describing:

(1) that a Change of Control has occurred or, if the Change of Control Offer is being made in advance of a Change of Control, that a Change of Control is expected to occur, and that such holder has, or upon such occurrence will have, the right to require the Company to purchase such holder's Notes at a purchase price in cash equal to the Change of Control Payment;

(2) the transaction or transactions that constitute, or are expected to constitute, such Change of Control;

(3) the purchase date, which will be no earlier than 10 days nor later than 60 days from the date such notice is delivered (the "*Change of Control Payment Date*");

(4) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(5) that unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(6) that holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "*Option of Holder to Elect Purchase*" on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(7) that holders will be entitled to withdraw their tendered Notes and their election to require the Company to purchase such Notes prior to the close of business on the third Business Day preceding the Change of Control Payment Date; *provided*, that the paying agent receives, not later than such time, a telegram, telex, facsimile transmission or letter setting forth the name of the holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(8) that if the Company is required to purchase less than all of the Notes, the holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered; *provided*, that the unpurchased portion of the Notes must be equal to $2,000 or an integral multiple of $1,000 in excess thereof;

(9) if such notice is delivered prior to the occurrence of a Change of Control, that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(10) the other instructions determined by the Company, consistent with this Section 4.14, that a holder must follow in order to have its Notes purchased.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.14, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations this Section 4.14 by virtue of such conflict.

On the Change of Control Payment Date, the Company will, to the extent lawful:

- accept for payment all Notes or portions of Notes properly tendered and not withdrawn pursuant to the Change of Control Offer;

- deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

- deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being repurchased by the Company.

The paying agent will promptly mail (or, through DTC, deliver) to each holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth hereunder made by the Company and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

SECTION 4.15 Corporate Existence.

Subject to Section 4.10, Section 4.14 and Article V, as the case may be, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership, limited liability company or other existence of each of its Subsidiaries in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary and the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders.

SECTION 4.16 [Reserved].

SECTION 4.17 Additional Guarantees.

After the Issue Date, the Company will not permit any of its Domestic Subsidiaries (other than any Excluded Subsidiary) other than a Guarantor to (i) guarantee the payment of Indebtedness under any Credit Facility permitted under clause (1) of the definition of Permitted Debt or (ii) guarantee Indebtedness (other than Indebtedness incurred pursuant to clause 22 of the second paragraph or the first paragraph of Section 4.9) in respect of capital markets debt securities of the Company or any other Guarantor in an aggregate principal amount in excess of $15.0 million unless within fifteen (15) Business Days, of such incurrence or guarantee of such Indebtedness, such Restricted Subsidiary executes and delivers to the Trustee a Guarantee pursuant to which such Restricted Subsidiary will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any and interest on the Notes and all other obligations under the this Indenture on the same terms and conditions as those set forth in this Indenture and supplements to the applicable Security Documents in order to grant a Lien in the Collateral owned by such Subsidiary to the same extent as that set forth in this Indenture and the Security Documents and take all actions required by the Security Documents to perfect such Lien (except that with respect to a guarantee of Indebtedness of the Company or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes) *provided* that this Section 4.17 shall not be applicable to any guarantee of such Indebtedness of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

SECTION 4.18 Further Instruments and Acts.

Upon request by the Trustee or the Notes Collateral Agent or as necessary, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture or as may be necessary or proper to create, evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral in favor of the Notes Collateral Agent for its benefit and the benefit the Trustee and the Holders in accordance with the Security Documents. The Company and the Guarantors shall comply with their respective obligations under Sections 4.04 and 4.16 of the Security Agreement in accordance with the terms thereof and subject to any grace periods set forth therein.

SECTION 4.19 Effectiveness of Covenants.

If on any date following the Issue Date (i) the Notes have an Investment Grade Rating from any two of the three Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), then beginning on such date and continuing until the Reversion Date (as defined below), the Company and the Restricted Subsidiaries will not be subject to the following covenants with respect to such Notes (collectively, the "*Suspended Covenants*"):

(1) Section 4.10;

(2) Section 4.7;

(3) Section 4.9;

(4) Section 5.1(4);

(5) Section 4.11;

(6) Section 4.17; and

(7) Section 4.8.

Upon the occurrence of a Covenant Suspension Event (the date of such occurrence, the "*Suspension Date*"), the amount of Excess Proceeds from any Asset Sale shall be reset at zero. In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the foregoing, and on any subsequent date (the "*Reversion Date*") any two of the three Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes of the applicable series below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events.

The period of time between (and including) the Suspension Date and the Reversion Date (but excluding the Reversion Date) is referred to in this description as the "Suspension Period."

The Guarantees of the Guarantors will be released during the Suspension Period to the extent provided under Section 11.1. If the Reversion Date occurs following a Suspension Date, no action taken or omitted to be taken by the Company or any of the Restricted Subsidiaries prior to the Reversion Date will give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided* that (1) with respect to Restricted Payments made on or after the Reversion Date, the amount of Restricted Payments made will be calculated as though Section 4.7 had been in effect prior to, but not during, the Suspension Period (including with respect to a Limited Condition Transaction entered into during the Suspension Period), (2) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period (or deemed incurred or issued in connection with a Limited Condition Acquisition entered into during the Suspension Period) will be classified to have been incurred or issued pursuant to clause (3) of the definition of "*Permitted Debt*," (3) no Subsidiaries shall be designated as Unrestricted Subsidiaries during any Suspension Period, (4) any Affiliate Transaction entered into on or after the Reversion Date pursuant to an agreement entered into during any Suspension Period shall be deemed to be permitted Section 4.11, (5) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Guarantor to take any action described in clauses (1) through (3) of the first paragraph of the covenant described under Section 4.8 that becomes effective during any Suspension Period shall be deemed to be permitted pursuant to clause (1)(y) of the second paragraph of Section 4.8, (6) no Subsidiary of the Company shall be required to comply with Section 4.17 on or after the Reversion Date with respect to any guarantee or direct obligation entered into by such Subsidiary during the Suspension Period, and (7) all Liens created, incurred or assumed during the Suspension Period in compliance with this Indenture will be deemed to have been outstanding on the Issue Date.

During the Suspension Period, the Company and its Restricted Subsidiaries will be entitled to incur Liens to the extent provided for under Section 4.12 (including, without limitation, Permitted Liens). To the extent such covenant and any Permitted Liens refer to one or more Suspended Covenants, such covenant or definition shall be interpreted as though such applicable Suspended Covenant(s) continued to be applicable during the Suspension Period (but solely for purposes of Section 4.12 and the "Permitted Liens" definition and for no other covenant).

Notwithstanding that the Suspended Covenants may be reinstated on and after the Reversion Date, (1) no Default, Event of Default or breach of any kind will be deemed to exist under this Indenture, the Notes of the applicable series or the Guarantees with respect to the Suspended Covenants in respect of any actions taken or events occurring during the Suspension Period or any actions taken at any time pursuant to any contractual obligation arising during any Suspension Period, and none of the Company or any of its Subsidiaries shall bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during any Suspension Period, in each case as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time based solely on any action taken or event that occurred during the Suspension Period), and (2) on and after the Reversion Date, the Company and each Restricted Subsidiary will be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period and to consummate the transactions contemplated thereby.

There can be no assurance that the Notes of any series will ever achieve or maintain Investment Grade Ratings. The Trustee shall have no duty to monitor the ratings of the Notes, determine whether a Suspension Date or Reversion Date has occurred or notify Holders of any of the foregoing.

ARTICLE V

SUCCESSORS

SECTION 5.1 Consolidation, Merger, Conveyance, Transfer or Lease.

The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to another Person; unless:

(1) (a) the Company is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is a corporation or limited liability company (the Company or such Person, including the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made, as the case may be, being herein called the "*Successor Company*") and, if such Person is not (i) a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws and (ii) organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, a co-obligor of the Notes is organized or existing under such laws;

(2) the Successor Company (if other than the Company) assumes all the obligations of the Company under the Notes, this Indenture and the Security Documents pursuant to agreements reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Event of Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if the same had occurred at the beginning of the applicable four- quarter period, either (a) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the first paragraph of Section 4.9 or (b) either (i) the Fixed Charge Coverage Ratio for the Company (or the Successor Company, as applicable) and its Restricted Subsidiaries would be equal to or greater than the Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries for the Applicable Measurement Period immediately prior to such transaction or (ii) the Consolidated Leverage Ratio of the Company is equal to or less than the Consolidated Leverage Ratio for the Applicable Measurement Period immediately prior to such transaction; and

(5) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the consolidation, or merger or sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, complies with the provisions of this Indenture.

For purposes of this Section 5.1, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Restricted Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Restricted Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of the Company.

The predecessor company will be released from its obligations under this Indenture and the Security Documents and the Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Security Documents, but, in the case of a lease of all or substantially all its assets, the predecessor will not be released from the obligation to pay the principal of and interest on the Notes or its Obligations under the Security Documents.

This Section 5.1 will not apply to a sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the assets of the Company to a Guarantor, or a Guarantor to the Company, another Guarantor or any Person that becomes a Guarantor in connection with such transaction. In addition, clauses (3), (4) and (5) of this Section 5.1 will not be applicable to (a) any Non-Guarantor Subsidiary consolidating with, merging into or selling, assigning, transferring, conveying, leasing or otherwise disposing of all or part of its properties and assets to the Company, a Guarantor or to another Non-Guarantor Subsidiary and (b) the Company or a Guarantor merging with an Affiliate solely for the purpose of reincorporating the Company, as the case may be, in another jurisdiction.

In no event shall the Company or any Restricted Subsidiary voluntarily dispose (which, for the avoidance of doubt, shall include any transfer to an Unrestricted Subsidiary) of any Specified Intellectual Property to any person who is, in the case of the Company or a Guarantor, not the Company or a Guarantor, or in the case of a Non-Guarantor Subsidiary, not the Company or a Restricted Subsidiary, other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles.

SECTION 5.2 Successor Company Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.1, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the "*Company*" shall refer instead to the successor corporation and not to the Company), and shall exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.1 Events of Default.

"*Event of Default*" means any of the following:

(1) the Company defaults in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(2) the Company defaults in the payment when due of interest on or with respect to the Notes and such default continues for a period of 30 days;

(3) the Company defaults in the performance of, or breaches any covenant, warranty or other agreement contained in, this Indenture (other than a default in the performance or breach of a covenant, warranty or agreement which is specifically dealt with in clauses (1) or (2) above) and such default or breach continues for a period of 60 days after the notice specified below; *provided* that in the case of a failure to comply with Section 4.3, such period of continuance of such default or breach shall be 120 days after written notice;

(4) a default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any Significant Subsidiary or the payment of which is guaranteed by the Company or any Significant Subsidiary (other than Indebtedness owed to the Company or a Significant Subsidiary), whether such Indebtedness or guarantee exists on the Issue Date or is created after the Issue Date, if (A) such default either (1) results from the failure to pay any such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or (2) relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity and (B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, is in the aggregate $40.0 million (or its foreign currency equivalent) or more at any one time outstanding;

(5) the failure by the Company or any Significant Subsidiary to pay final non- appealable judgments aggregating in excess of $40.0 million (net of any amounts which are covered by enforceable insurance policies issued by solvent insurance companies) which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after the applicable judgment becomes final and non-appealable and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) the Guarantee of a Significant Subsidiary that is a Guarantor or any group of Subsidiaries that are Guarantors and that, taken together as of the date of the most recent audited financial statements of the Company, would constitute a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms hereof) or any such Guarantor or group of Guarantors denies or disaffirms its obligations under this Indenture or any such Guarantee, other than by reason of the release of the Guarantee in accordance with the terms of Section 11.6, and such Default continues for 10 days;

(7) (i) the Company, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a custodian of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due; or

(ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(B) appoints a custodian of the Company or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries; or

(C) orders the liquidation of the Company or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days;

(8) unless all the Collateral has been released from the Liens in accordance with the provisions of this Indenture and the Security Documents, the Company shall assert or any Guarantor shall assert, in any pleading in a court of competent jurisdiction, with respect to any Collateral have a value in excess of $35.0 million, that any such security interest is invalid or unenforceable and, the Company or such Significant Subsidiary fails to rescind such assertions within 30 days after the Company has actual knowledge of such assertions; or

(9) the failure of the Company or any Guarantor to comply for 60 days after notice with its other agreements contained in the Security Documents, except for a failure that would not be material as a whole to the Holders of the Notes and would not materially affect the value of the Collateral taken as a whole.

SECTION 6.2 Acceleration.

If an Event of Default (other than an Event of Default specified in clause (7) of Section 6.1 with respect to the Company) shall occur and be continuing, up to two years following the first public notice or notice to the Trustee of such event, the Trustee or the Holders of at least 30% in principal amount of the outstanding Notes may declare the principal of and accrued and unpaid interest, if any, on the outstanding Notes to be due and payable by a notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration" (an "*Acceleration Notice*"). Upon such declaration of acceleration and issuance of an Acceleration Notice, the aggregate principal of and any accrued and unpaid interest on the outstanding Notes shall immediately become due and payable; *provided* that a notice of Default may not be given with respect to any action taken, and reported publicly or to Holders, more than two years prior to such notice of Default. Any time period to cure any actual or alleged Default or Event of Default may be extended or stayed by a court of competent jurisdiction.

If an Event of Default specified in clause (7) of Section 6.1 with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in principal amount of the then outstanding Notes, by written notice to the Trustee, may on behalf of all of the Holders rescind and cancel an acceleration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;

(4) if the Company has paid the Trustee its agreed-upon compensation and reimbursed the Trustee for its expenses, disbursements and advances; and

(5) in the event of the cure or waiver of an Event of Default of the type described in clause (7) of Section 6.1, the Trustee shall have received an Officer's Certificate and an Opinion of Counsel that such Event of Default has been cured or waived.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

In the event of any Event of Default specified in clause (4) of Section 6.1, such Event of Default and all consequences thereof (excluding, however, any resulting payment default) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose, the Company delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured.

Prior to any Acceleration Notice being provided, (i) if a Default occurring by reason of a failure to report or to deliver a required certificate in connection with another Default (the "*Initial Default*") occurs, then at the time such Initial Default is cured, such Default for a failure to report or to deliver a required certificate in connection with another Default (which Default resulted solely because of that Initial Default) will also be cured without any further action, and (ii) any Default or Event of Default occurring by reason of the failure to comply with the time periods prescribed in Section 4.3 or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such (A) report required by such covenant or such notice or (B) certificate, as applicable, even though such delivery is not within the prescribed period specified in this Indenture.

In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to Section 3.7, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the issuance of an Acceleration Notice.

SECTION 6.3 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest, if any, on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence to the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.4 Waiver of Past Defaults.

Subject to Section 9.2, the Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (other than as a result of an acceleration, subject to the fourth paragraph of Section 6.2), which shall require the consent of all of the Holders of the Notes then outstanding.

SECTION 6.5 Control by Majority.

Subject to the terms of the Intercreditor Agreement and the Security Documents, the Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available (including the foreclosure of the Collateral) to the Trustee or exercising any trust power conferred on it. However, (i) the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability, and (ii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 6.6 Limitation on Suits.

A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

(a) the Holder gives to the Trustee written notice of a continuing Event of Default or the Trustee receives such notice from the Company;

(b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer and, if requested, provide to the Trustee indemnity or security reasonably satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within sixty (60) days after receipt of the request and the offer and, if requested, the provision of such indemnity or security; and

(e) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.7 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest, if any, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.8 Collection Suit by Trustee.

If an Event of Default specified in Section 6.1(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.9 Trustee May File Proofs of Claim.

Subject to the terms of the Intercreditor Agreement and the Security Documents, the Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other securities or property payable or deliverable upon the conversion or exchange of the Notes or on any such claims, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 Priorities.

Subject to the provisions of the Intercreditor Agreement and the Security Documents, if the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money and property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.7, including payment of all reasonable compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, if any, respectively;

Third: without duplication, to the Holders for any other Obligations owing to the Holders under this Indenture and the Notes; and

Fourth: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

SECTION 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE VII

TRUSTEE

SECTION 7.1 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture or the TIA, and the Trustee need perform only those duties that are specifically set forth in this Indenture or the TIA and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

However, the Trustee shall examine the certificates and opinions furnished to it to determine whether or not they conform to the requirements of this Indenture; *provided*, that the Trustee need not act or refrain from acting based on any certificate or opinion that it determines to be not in conformity with the requirements of this Indenture. If presented with a non-conforming certificate or opinion, the Trustee may request the delivering party to re-issue the certificate or opinion in the manner required by this Indenture before taking any action.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by an officer of the Trustee, unless it is proved in a court of competent jurisdiction in a final and non-appealable judgment that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.1.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 7.2 Rights of Trustee.

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document (whether in original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. Prior to taking, suffering or admitting any action, the Trustee may consult with counsel of the Trustee's own choosing, and the Trustee shall be fully protected from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in conclusive reliance on the advice or opinion of such counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture. Any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate, and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company or a Guarantor shall be sufficient if signed by an officer of the Company or such Guarantor.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities (which includes the reasonable costs of Trustee's legal counsel) that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or documents, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine during normal business hours the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including, for the avoidance of doubt, as Notes Collateral Agent), and to each agent, custodian and other Persons employed to act hereunder.

(i) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(j) The Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless a Responsible Officer of the Trustee has received from the Company or any other obligor upon the Notes or from any Holder written notice thereof at its address set forth in Section 12.2 and such notice references the Notes and this Indenture. In the absence of such actual knowledge or such notice, the Trustee may conclusively assume that no such Default or Event of Default exists.

(k) In no event shall the Trustee be responsible or liable for special, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit and punitive damages) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian nominee or attorney appointed by it with due care hereunder.

(m) The Trustee shall not be required to give any bond or surety in respect of its powers and duties hereunder.

(n) Neither the Trustee nor any of its directors, officers, employees, agents, or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates, or employees, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy or omission in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties or set forth herein as a result of any inaccuracy or incompleteness.

(o) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

SECTION 7.3 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (within the meaning of the TIA), it must eliminate such conflict within ninety (90) days, apply to the Commission for permission to continue as Trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11.

SECTION 7.4 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes, any statement or recital on any Officer's Certificate delivered to the Trustee under Article IV or Section 8.4, or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication and any notices or reports under Sections 7.5 and 7.6.

SECTION 7.5 Notice of Defaults.

If a Default or Event of Default occurs and is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice, and be protected in doing so, if and so long as the Trustee in good faith determines that withholding the notice is in the interests of the Holders.

Any notice of Default, notice of acceleration or instruction to the Trustee to provide a notice of Default, notice of acceleration or take any other action (a "*Noteholder Direction*") provided by any one or more Holders (other than a Regulated Bank) (each a "Directing Holder") must be accompanied by a written representation from each such Holder of Notes delivered to the Company and the Trustee that such Holder is not (or, in the case such Holder is DTC or its nominee, that such holder is being instructed solely by beneficial owners that are not) Net Short (a "*Position Representation*"), which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Company with such other information as the Company may reasonably request from time to time in order to verify the accuracy of such noteholder's Position Representation within five (5) Business Days of request therefor (a "*Verification Covenant*"). In any case in which the noteholder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the notes in lieu of DTC or its nominee, and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Event of Default that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such noteholder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such noteholder, the percentage of notes held by the remaining noteholders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void *ab initio*, with the effect that such Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

Notwithstanding anything in the preceding two paragraphs to the contrary, any Noteholder Direction delivered to the Trustee during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the foregoing paragraphs. In addition, for the avoidance of doubt, the foregoing paragraphs shall not apply to any Holder that is a Regulated Bank.

For the avoidance of doubt, the Trustee shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with this Indenture, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. The Trustee shall have no liability to the Company, any noteholder or any other Person in acting in good faith on a Noteholder Direction. A Position Representation may be substantially in the form of Exhibit E hereto with such other changes and information as reasonably requested by the Company, the Trustee and the Notes Collateral Agent, if applicable.

SECTION 7.6 Reports by Trustee to Holders of the Notes.

Within 60 days after each January 15 beginning with January 15, 2022, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports as required by TIA § 313(c).

A copy of each report at the time of its mailing to the Holders shall be mailed to the Company and filed with the Commission and each stock exchange on which the Company has informed the Trustee in writing the Notes are listed in accordance with TIA § 313(d). The Company shall promptly notify the Trustee when the Notes are listed on any stock exchange and of any delisting thereof.

SECTION 7.7 Compensation and Indemnity.

The Company shall pay to the Trustee from time to time compensation for its acceptance of this Indenture and services hereunder as agreed upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company and the Guarantors, jointly and severally, shall indemnify the Trustee in any capacity under this Indenture (which for purposes of this Section 7.7 shall include its officers, directors, employees and agents) against any and all claims, damage, losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 7.7) and defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, claim, damage, liability or expense shall be caused by its own negligence or willful misconduct. The Trustee shall notify the Company promptly of any claim of which a Responsible Officer has received written notice and for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim, and the Trustee shall cooperate in the defense. The Trustee may have separate counsel, and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Company and the Guarantors under this Section 7.7 shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

To secure the Company's payment obligations in this Section 7.7, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal or interest, if any, on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(9) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

SECTION 7.8 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.8.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. Upon 30 days' notice, the Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee upon 30 days' written notice thereof if:

(a) the Trustee fails to comply with Section 7.10;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the expense of the Company), the Company or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and the duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.7. No resigning Trustee shall be responsible or liable for actions or inactions of any properly appointed successor Trustee. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Company's and the Guarantors' obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

SECTION 7.9 Successor Trustee by Merger, Etc.

If the Trustee or any Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee or any Agent, as applicable, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 7.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power and that is subject to supervision or examination by federal or state authorities. The Trustee together with its affiliates shall at all times have a combined capital surplus of at least the minimum amount required by the TIA, as set forth in its most recent annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA §§ 310(a)(l), (2) and (5). The Trustee is subject to TIA § 310(b) including the provision in § 310(b)(1); *provided* that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities, or conflicts of interest or participation in other securities, of the Company or the Guarantors are outstanding if the requirements for exclusion set forth in TIA § 310(b)(1) are met.

SECTION 7.11 Preferential Collection of Claims Against the Company.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12 Security Documents; Intercreditor Agreement.

By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and Notes Collateral Agent, as the case may be, to execute and deliver on or after, as the case may be, the Issue Date, the Intercreditor Agreement and any other Security Documents in which the Trustee or the Notes Collateral Agent, as applicable, is named as a party, including any Security Documents executed after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Notes Collateral Agent are (a) expressly authorized to make the representations attributed to Holders in any such agreements and (b) not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, the Intercreditor Agreement or any other Security Document, the Trustee and the Notes Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of any other Security Document).

SECTION 7.13 Limitation on Duty of Trustee in Respect of Collateral; Indemnification.

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Trustee shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee in good faith.

(b) The Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Trustee, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Trustee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Intercreditor Agreement or the Security Documents by the Company, the Guarantors or the ABL Agent.

This Section 7.13 is in furtherance, and not in limitation, of the rights of the Trustee in such capacity and as Notes Collateral Agent under Section 10.7 hereof.

ARTICLE VIII

DEFEASANCE; DISCHARGE OF THE INDENTURE

SECTION 8.1 Option to Effect Legal Defeasance or Covenant Defeasance.

The Company may, at any time, at the option of its Board of Directors and evidenced by a Board Resolution set forth in an Officer's Certificate, elect to have either Section 8.2 or 8.3 applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2 Legal Defeasance.

Upon the Company's exercise under Section 8.1 of the option applicable to this Section 8.2, the Company shall, subject to the satisfaction of the conditions set forth in Section 8.4, be deemed to have been discharged from its obligations with respect to all outstanding Notes, and have all Liens on the collateral securing the Notes released, on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 and the other Sections of this Indenture referred to in clause (a) and (b) below, and to have satisfied all of its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on such Notes when such payments are due from the trust referred to in Section 8.4(1); (b) the Company's obligations with respect to such Notes under Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.10, 2.12, 2.16, 4.1, 4.2 and 4.15 (as to the legal existence of the Company only); (c) the rights, powers, trusts, benefits, duties and immunities of the Trustee, including without limitation thereunder, under Sections 7.7, 8.5 and 8.7 and the Company's obligations in connection therewith; (d) the Company's rights pursuant to Section 3.7; and (e) the provisions of this Article VIII. Subject to compliance with this Article VIII, the Company may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3.

SECTION 8.3 Covenant Defeasance.

Upon the Company's exercise under Section 8.1 of the option applicable to this Section 8.3, the Company shall, subject to the satisfaction of the conditions set forth in Section 8.4, be released from its obligations under the covenants contained in Sections 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 (as to the legal existence of the Company's Subsidiaries only), 4.16, 4.17, 5.1(4) and Article II with respect to the outstanding Notes, and have all Liens securing the collateral securing the Notes released, on and after the date the conditions set forth below are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company or any of its Subsidiaries may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.1 of the option applicable to this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4, Sections 6.1(4), 6.1(7), 6.1(8) and, solely with respect to any Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, 6.1(9) shall not constitute Events of Default.

Notwithstanding any discharge or release of any obligations pursuant to Section 8.2 or Section 8.3, the Company's obligations in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.10, 2.12, 2.16, 4.1, 4.2, 4.15 (as to the legal existence of the Company only), 7.7, 8.5 and 8.7 shall survive until the Notes are no longer outstanding pursuant to the last paragraph of Section 2.8. After the Notes are no longer outstanding, the Company's obligations in Sections 7.7, 8.5 and 8.7 shall survive.

SECTION 8.4 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.2 or Section 8.3 to the outstanding Notes:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in United States dollars, non-callable United States Government Securities, or a combination of cash in United States dollars and non-callable United States Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, delivered to the Trustee, to pay the principal of, or interest and premium, if any, on the outstanding Notes issued hereunder on the stated maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Company has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders and Beneficial Owners of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders and Beneficial Owners of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) [reserved];

(5) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Notes over the other creditors of the Company or any Guarantor or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or any Guarantor or others; and

(6) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel (which may be subject to certain qualifications), each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Notwithstanding the foregoing, the requirements of clause (2) above with respect to a Legal Defeasance need not be complied with if all Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable on the maturity date within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

SECTION 8.5 Deposited Money and United States Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.6, all money and non-callable United States Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "*Trustee*") pursuant to Section 8.4 in respect of the outstanding Notes shall be held in trust, shall not be invested, and shall be applied by the Trustee in accordance with the provisions of such Notes and this Indenture to the payment, either directly or through any Paying Agent (including the Company or any Subsidiary acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable United States Government Securities deposited pursuant to Section 8.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article VIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the written request of the Company and be relieved of all liability with respect to any money or non-callable United States Government Securities held by it as provided in Section 8.4 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(1)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6 Repayment to Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest, if any, on any Note and remaining unclaimed for two years after such principal and premium, if any, or interest has become due and payable shall be paid to the Company on its written request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof; and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the *New York Times* and *The Wall Street Journal* (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

SECTION 8.7 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non- callable United States Government Securities in accordance with Section 8.2, Section 8.3 or Section 8.8, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations of the Company under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2, Section 8.3 or Section 8.8 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2, Section 8.3 or Section 8.8, as the case may be; *provided*, *however*, that, if the Company makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

SECTION 8.8 Discharge.

The Company and the Guarantors may terminate the obligations under this Indenture and the Notes when:

(1) either:

(A) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(B) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the giving of a notice of redemption or otherwise or will or may become due and payable by reason of the giving of a notice of redemption or otherwise within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in United States dollars, non-callable United States Government Securities, or a combination thereof, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Event of Default has occurred and is continuing on the date of the deposit or will occur as a result of the deposit (other than a Default resulting from borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowing) and the deposit will not result in a breach or violation of, or constitute a default under, any other material instrument to which the Company is a party or by which the Company is bound;

(3) the Company has paid or caused to be paid all Obligations payable by it under this Indenture, the Guarantees and (other than with respect to Pari Passu Lien Obligations secured thereby) the Security Documents; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes issued thereunder at maturity or the redemption date, as the case may be.

(5) In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

In the case of clause (1)(B) of this Section 8.8, and subject to the next sentence and notwithstanding the foregoing paragraph, the Company's obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.10, 2.12, 2.16, 4.1, 4.2, 4.15 (as to legal existence of the Company only), 7.7, 8.5 and 8.7 shall survive until the Notes are no longer outstanding pursuant to the last paragraph of Section 2.8. After the Notes are no longer outstanding, the Company's obligations in Sections 7.7, 8.5 and 8.7 shall survive any discharge pursuant to this Section 8.8.

After such delivery or irrevocable deposit, as set forth in this Section 8.8, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under the Notes and this Indenture except for those surviving obligations specified above.

ARTICLE IX

AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 9.1 Without Consent of Holders of the Notes.

Notwithstanding Section 9.2, without the consent of any Holders, the Company, the Guarantors and the Trustee and/or Notes Collateral Agent, at any time and from time to time, may amend or supplement this Indenture, the Notes issued hereunder, the Intercreditor Agreement and the Security Documents for any of the following purposes to:

(1) cure any ambiguity, omission, mistake, defect or inconsistency;

(2) provide for uncertificated Notes in addition to or in place of Certificated Notes (*provided*, *however*, that such uncertificated Notes are in "registered" form within the meaning of section 163 of the Code and Treasury Regulations thereunder);

(3) provide for the assumption by a Successor Company or a successor company of a Guarantor, as applicable, of the Company's or such Guarantor's obligations under this Indenture, the Security Documents, the Notes or any Guarantee or otherwise comply with Article V;

(4) (a) make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder or (b) to surrender any right or privileges conferred upon the Company or the Guarantors;

(5) add additional assets as Collateral, to release Collateral from the Liens pursuant to this Indenture and the Security Documents when permitted or required by this Indenture, the Security Documents and/or the Intercreditor Agreement or to modify the Security Documents and/or the Intercreditor Agreement to secure additional extensions of credit and add additional secured creditors holding Obligations that are permitted to constitute Pari Passu Lien Obligations under the Security Documents pursuant to the terms of this Indenture;

(6) add a Guarantee of the Notes;

(7) provide for the issuance of Additional Notes in accordance this Indenture;

(8) release a Guarantor upon its sale or designation as an Unrestricted Subsidiary or other permitted release from its Guarantee; *provided* that such sale, designation or release is in accordance with the applicable provisions of this Indenture;

(9) make any amendment to the provisions of this Indenture relating to the transfer and legending of the Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided*, that (a) compliance with this Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any applicable securities laws, as determined by the Company, and (b) such amendment does not materially and adversely affect the rights of the holders to transfer the Notes, as determined by the Company;

(10) evidence and provide for the acceptance of appointment by a successor trustee; *provided*, that the successor trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(11) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA, if applicable;

(12) comply with the rules of any applicable securities depositary;

(13) conform the text of this Indenture, the Guarantees or the Notes to any provision of the "Description of Notes" section in the Offering Memorandum;

(14) secure any future Indebtedness to the extent permitted under this Indenture, the Security Documents and the Intercreditor Agreement; or

(15) enter into any intercreditor agreement having substantially similar terms with respect to the Holders as those set forth in the Intercreditor Agreement, taken as a whole, or any joinder thereto or to add additional parties with Pari Passu Lien Priority to any Security Documents.

SECTION 9.2 With Consent of Holders of Notes.

With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes, the Intercreditor Agreement or the Security Documents or, subject to the third paragraph of Section 6.2, Sections 6.4 and 6.7, waive any existing Default or Event of Default or compliance with any provision of this Indenture or the Notes; *provided*, *however*, that no such amendment, supplement or waiver shall, without the consent of the Holder of each outstanding Note affected thereby (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the maturity of any Note, reduce the premium payable upon the redemption of the Notes or change the time at which the Notes may be redeemed as described in Section 3.7; *provided* that any amendment to the minimum notice requirement may be made with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (other than provisions relating to Section 4.10 or Section 4.14);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the Notes issued hereunder (except a rescission of acceleration of the Notes and the waiver of the payment default that resulted from such acceleration, issued hereunder by the holders of at least a majority in aggregate principal amount of the Notes issued hereunder with respect to any default and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of, or interest or premium, if any, on the Notes issued hereunder or impair the contractual right set forth in this Indenture and the Notes to institute suit for the enforcement of any payment on or with respect to such Holder's Notes after the due dates thereof;

(7) make any change in the ranking of any Note (other than the priority of Liens) that would adversely affect the Holders;

(8) amend, change or modify in any material respect the obligation of the Company to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer in respect of an Asset Sale that has been consummated after a requirement to make an Asset Sale Offer has arisen; or

(9) make any change in this Section 9.2.

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of the Holders of all the Notes waive any past Default under this Indenture and its consequences, except a Default:

(1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to an Offer to Purchase which has been made by the Company), or

(2) in respect of a covenant or provision hereof which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

Additionally, without the consent of holders of at least 66 2/3% in principal amount of the Notes then outstanding, (i) no such amendment, waiver or modification will (A) release all or substantially all of the Collateral from the Liens securing the Notes and Guarantees or (B) change or alter the priority of the Liens securing the Notes in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture, the Security Documents or the Intercreditor Agreement.

SECTION 9.3 [Reserved].

SECTION 9.4 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. When an amendment, supplement or waiver becomes effective in accordance with its terms, it thereafter binds every Holder.

The Company may, but shall not be obligated to, fix a record date for determining which Holders consent to such amendment, supplement or waiver. If the Company fixes a record date, the record date shall be fixed at (i) the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished for the Trustee prior to such solicitation pursuant to Section 2.5 or (ii) such other date as the Company shall designate.

SECTION 9.5 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.6 Trustee and Notes Collateral Agent to Sign Amendments, Etc.

The Trustee and the Notes Collateral Agent shall sign any amended or supplemental indenture or amended or supplemented Security Document or amendment or supplement to the Intercreditor Agreement authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee and the Notes Collateral Agent. In signing or refusing to sign any amendment or supplemental indenture or amended or supplemented Security Document or amendment or supplement to the Intercreditor Agreement, the Trustee and the Notes Collateral Agent shall be provided with and (subject to Section 7.1) shall be fully protected in conclusively relying upon an Officer's Certificate and an Opinion of Counsel stating that the execution of such amendment or supplemental indenture or amended or supplemented Security Document or amendment or supplement to the Intercreditor Agreement is authorized or permitted by this Indenture, that all conditions precedent thereto have been met or waived, that such amendment or supplemental indenture is not inconsistent herewith and that it will be valid and binding and enforceable upon the Company and the Guarantors in accordance with its terms.

ARTICLE X

COLLATERAL

SECTION 10.1 Security Documents.

On and after the Issue Date, the due and punctual payment of the principal of, premium and interest on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium and interest on the Notes and payment and performance of all other Obligations of the Company and the Guarantors to the Holders, the Trustee or the Notes Collateral Agent under this Indenture, the Notes, the Guarantees, the Intercreditor Agreement and the Security Documents, according to the terms hereunder or thereunder (collectively, the "*Notes Obligations*"), shall be secured as provided in the Security Documents, which define the terms of the Liens that secure the Notes Obligations, subject to the terms of the Intercreditor Agreement. The Trustee and the Company hereby acknowledge and agree that the Notes Collateral Agent holds the Collateral as agent for the benefit of the Holders and the Trustee and pursuant to the terms of the Security Documents and the Intercreditor Agreement. Each Holder, by accepting a Note, consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral) and the Intercreditor Agreement as the same may be in effect or may be amended from time to time in accordance with their terms and this Indenture and the Intercreditor Agreement, and authorizes and directs the Notes Collateral Agent to enter into the Security Documents and the Intercreditor Agreement and to perform its obligations and exercise its rights thereunder in accordance therewith. The Company shall deliver to the Notes Collateral Agent copies of all documents required to be filed pursuant to the Security Documents.

SECTION 10.2 Release of Collateral.

The Notes Collateral Agent may take any action requested by the Company having the effect of releasing or subordinating any Collateral to the extent necessary to permit consummation of any transaction not prohibited by this Indenture. In addition, the Liens on the Collateral will be automatically released with respect to the Notes and the Guarantees, in each case without delivery of any document or performance of any further act of any Person

(a) in whole, upon payment in full (other than any contingent obligation arising thereunder for which a claim has not been asserted) of the principal of, accrued and unpaid interest, if any, and premium, if any, on the Notes;

(b) with respect to any Guarantor, upon the consummation of any transaction effected for a legitimate business purpose and permitted by this Indenture as a result of which such Guarantor ceases to be a Guarantor (including by becoming an Excluded Subsidiary), pursuant to a merger with a Subsidiary that is not a Guarantor or a designation or conversion as an Unrestricted Subsidiary, in each case effected for a legitimate business purpose in a transaction permitted by, and pursuant to, this Indenture;

(c) upon (i) any sale or other transfer by the Company or any Guarantor (other than to the Company or any other Guarantor) of any Collateral in a transaction permitted under the Security Documents, (ii) the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral or to the release of any Guarantor from its Guarantee pursuant to the Security Documents, (iii) upon any Collateral becoming Excluded Assets, (iv) any Collateral that is owned by a Guarantor to the extent such Guarantor has been released from its Guarantee in accordance with this Indenture or (v) otherwise in accordance with, and as expressly provided for under, this Indenture and the Security Documents;

(d) as described in the Intercreditor Agreement;

(e) in whole, upon satisfaction and discharge of this Indenture as described under Section 8.8;

(f) in whole, upon legal defeasance or covenant defeasance as described under Sections 8.2 or 8.3;

(g) to the extent any particular item of Collateral becomes an Excluded Asset;

(h) as described under Section 4.19; *provided* that the Liens on the Collateral in favor of the Notes will be reinstated upon the occurrence of the Reversion Date;

(i) the release of Excess Proceeds that remain unexpended after the conclusion of an Asset Sale Offer conducted in accordance with this Indenture;

(j) as described under Article IX;

(k) in part, to enable the Company and the Guarantors to consummate a disposition of such property or assets (other than any disposition to the Company or a Guarantor) to the extent not prohibited under this Section 4.10 or Section 5.1.

Upon any sale or disposition of Collateral in compliance with this Indenture and the Security Documents, the Liens in favor of the Collateral Agent on such Collateral and (subject to the provisions described under Section 10.02) all proceeds thereof shall automatically terminate and be released and the Notes Collateral Agent will execute and deliver such documents and instruments as the Company and the Guarantors may request to evidence such termination and release (without recourse or warranty) without the consent of the Holders.

SECTION 10.3 Suits to Protect the Collateral.

Subject to the provisions of Article VII and the Security Documents and the Intercreditor Agreement, the Trustee, without the consent of the Holders, on behalf of the Holders, may or may direct the Notes Collateral Agent to take all actions it determines in order to:

(a) enforce any of the terms of the Security Documents; and

(b) collect and receive any and all amounts payable in respect of the Notes Obligations.

Subject to the provisions of the Security Documents and the Intercreditor Agreement, the Trustee and the Notes Collateral Agent shall have power to institute and to maintain such suits and proceedings as the Trustee may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 10.3 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Notes Collateral Agent.

SECTION 10.4 Authorization of Receipt of Funds by the Trustee Under the Security Documents.

Subject to the provisions of the Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 10.5 Purchaser Protected.

In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Notes Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article X to be sold be under any obligation to ascertain or inquire into the authority of the Company or the applicable Guarantor to make any such sale or other transfer.

SECTION 10.6 Powers Exercisable by Receiver or Trustee.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article X upon the Company or a Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or a Guarantor or of any Officer or Officers thereof required by the provisions of this Article X; and if the Trustee shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee.

SECTION 10.7 Collateral Agent.

(a) Each of the Holders by acceptance of the Notes hereby designates and appoints the Notes Collateral Agent as its agent under this Indenture, the Security Documents and the Intercreditor Agreement and each of the Holders by acceptance of the Notes hereby irrevocably authorizes and directs the Notes Collateral Agent to take such action on its behalf under the provisions of this Indenture, the Security Documents and the Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to the Notes Collateral Agent by the terms of this Indenture, the Security Documents and the Intercreditor Agreement, and consents and agrees to the terms of the Intercreditor Agreement and each Security Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Notes Collateral Agent agrees to act as such on the express conditions contained in this Section 10.7. The provisions of this Section 10.7 are solely for the benefit of the Notes Collateral Agent and none of the Trustee, any of the Holders or any of the Company or the Guarantors shall have any rights as a third party beneficiary of any of the provisions contained herein. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provisions of this Indenture, the Intercreditor Agreement and the Security Documents, and the exercise by the Notes Collateral Agent of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Security Documents and the Intercreditor Agreement, the duties of the Notes Collateral Agent shall be ministerial and administrative in nature, and the Notes Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the Security Documents or the Intercreditor Agreement to which the Notes Collateral Agent is a party, nor shall the Notes Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder or the Company or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Security Documents and the Intercreditor Agreement or otherwise exist against the Notes Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Notes Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Notes Collateral Agent may perform any of its duties under this Indenture, the Security Documents or the Intercreditor Agreement by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a "*Related Person*") and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Notes Collateral Agent shall not be responsible for the negligence or willful misconduct of any receiver, agent, employee, attorney-in- fact or Related Person that it selects as long as such selection was made in good faith.

(c) None of the Notes Collateral Agent or any of its respective Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or under or in connection with any Security Document or the Intercreditor Agreement or the transactions contemplated thereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Company or any Guarantor or Affiliate of the Company or any Guarantor, or any Officer or Related Person thereof, contained in this Indenture, the Security Documents or the Intercreditor Agreement, or in any certificate, report, statement or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Security Documents or the Intercreditor Agreement, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, the Security Documents or the Intercreditor Agreement, or for any failure of the Company or any Guarantor or any other party to this Indenture, the Security Documents or the Intercreditor Agreement to perform its obligations hereunder or thereunder. None of the Notes Collateral Agent or any of its respective Related Persons shall be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture, the Security Documents or the Intercreditor Agreement or to inspect the properties, books, or records of the Company or any Guarantor or any of their respective Affiliates.

(d) The Notes Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or email) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including, without limitation, counsel to the Company or any Guarantor), independent accountants and other experts and advisors selected by the Notes Collateral Agent. The Notes Collateral Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. The Notes Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture, the Security Documents or the Intercreditor Agreement unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Notes Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture, the Security Documents or the Intercreditor Agreement in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(e) The Notes Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Notes Collateral Agent shall have received written notice from the Trustee or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Notes Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with Article VI or the Holders of a majority in aggregate principal amount of the Notes (subject to this Section 10.7).

(f) The Notes Collateral Agent may resign at any time by notice to the Trustee and the Company, such resignation to be effective upon the acceptance of a successor agent to its appointment as Notes Collateral Agent. If the Notes Collateral Agent resigns under this Indenture, the Company shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of the Notes Collateral Agent (as stated in the notice of resignation), the Notes Collateral Agent may appoint, after consulting with the Trustee, subject to the consent of the Company (which shall not be unreasonably withheld and which shall not be required during a continuing Event of Default), a successor collateral agent. If no successor collateral agent is appointed and consented to by the Company pursuant to the preceding sentence within thirty (30) days after the intended effective date of resignation (as stated in the notice of resignation) the Notes Collateral Agent shall be entitled to petition a court of competent jurisdiction, at the expense of the Company, to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Notes Collateral Agent, and the term "*Notes Collateral Agent*" shall mean such successor collateral agent, and the retiring Notes Collateral Agent's appointment, powers and duties as the Notes Collateral Agent shall be terminated. After the retiring Notes Collateral Agent's resignation hereunder, the provisions of this Section 10.7 (and Section 7.7) shall continue to inure to its benefit and the retiring Notes Collateral Agent shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Notes Collateral Agent under this Indenture.

(g) The Trustee shall initially act as Notes Collateral Agent and shall be authorized to appoint co-Notes Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents or the Intercreditor Agreement, neither the Notes Collateral Agent nor any of its respective officers, directors, employees or agents or other Related Persons shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Notes Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Notes Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

(h) The Notes Collateral Agent is authorized and directed to (i) enter into the Security Documents to which it is party, on or after the Issue Date, whether executed on or after the Issue Date, (ii) enter into the Intercreditor Agreement on or after the Issue Date, (iii) make the representations of the Holders set forth in the Security Documents and Intercreditor Agreement, (iv) bind the Holders on the terms as set forth in the Security Documents and the Intercreditor Agreement and (v) perform and observe its obligations under the Security Documents and the Intercreditor Agreement.

(i) If at any time or times the Trustee shall receive (i) by payment, foreclosure, set-off or otherwise, any proceeds of Collateral or any payments with respect to the Notes Obligations arising under, or relating to, this Indenture, except for any such proceeds or payments received by the Trustee from the Notes Collateral Agent pursuant to the terms of this Indenture, or (ii) payments from the Notes Collateral Agent in excess of the amount required to be paid to the Trustee pursuant to Article VI, the Trustee shall promptly turn the same over to the Notes Collateral Agent, in kind, and with such endorsements as may be required to negotiate the same to the Notes Collateral Agent such proceeds to be applied by the Notes Collateral Agent pursuant to the terms of this Indenture, the Security Documents and the Intercreditor Agreement.

(j) The Notes Collateral Agent is each Holder's agent for the purpose of perfecting the Holders' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon request from the Company, the Trustee shall notify the Notes Collateral Agent thereof and promptly shall deliver such Collateral to the Notes Collateral Agent or otherwise deal with such Collateral in accordance with the Notes Collateral Agent's instructions.

(k) The Notes Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Company or any Guarantor or is cared for, protected, or insured or has been encumbered, or that the Notes Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the Company's or any Guarantor's property constituting collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Notes Collateral Agent pursuant to this Indenture, any Security Document or the Intercreditor Agreement other than pursuant to the instructions of the Trustee or the Holders of a majority in aggregate principal amount of the Notes or as otherwise provided in the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, the Notes Collateral Agent shall have no other duty or liability whatsoever to the Trustee or any Holder as to any of the foregoing.

(l) If the Company or any Guarantor (i) incurs any obligations in respect of RCF Obligations at any time when no intercreditor agreement is in effect or at any time when Indebtedness constituting RCF Obligations entitled to the benefit of an existing Intercreditor Agreement is concurrently retired, and (ii) delivers to the Notes Collateral Agent an Officer's Certificate so stating and requesting the Notes Collateral Agent to enter into an intercreditor agreement (on substantially the same terms as the Intercreditor Agreement) in favor of a designated agent or representative for the holders of the RCF Obligations so incurred, the Notes Collateral Agent shall (and is hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Notes Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

(m) No provision of this Indenture, the Intercreditor Agreement or any Security Document shall require the Notes Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Notes Collateral Agent) if it shall have received indemnity satisfactory to the Notes Collateral Agent against potential costs and liabilities incurred by the Notes Collateral Agent relating thereto. Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreement or the Security Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Notes Collateral Agent has determined that the Notes Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Notes Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Notes Collateral Agent in its sole discretion, protecting the Notes Collateral Agent from all such liability. The Notes Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(n) The Notes Collateral Agent (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture, the Intercreditor Agreement and the Security Documents or instruments referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct, (ii) shall not be liable for interest on any money received by it except as the Notes Collateral Agent may agree in writing with the Company (and money held in trust by the Notes Collateral Agent need not be segregated from other funds except to the extent required by law) and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Notes Collateral Agent shall not be construed to impose duties to act.

(o) Neither the Notes Collateral Agent nor the Trustee shall be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Neither the Notes Collateral Agent nor the Trustee shall be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(p) The Notes Collateral Agent does not assume any responsibility for any failure or delay in performance or any breach by the Company or any Guarantor under this Indenture, the Intercreditor Agreement and the Security Documents. Neither the Notes Collateral Agent nor the Trustee shall be responsible for the existence, genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien. The Notes Collateral Agent shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in any this Indenture, any Security Documents, the Intercreditor Agreement or in any certificate, report, statement, or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Intercreditor Agreement or any Security Document; the validity, enforceability or collectability of any Notes Obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Obligations under this Indenture, the Intercreditor Agreement and the Security Documents. The Notes Collateral Agent shall have no obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture, the Intercreditor Agreement and the Security Documents, or the satisfaction of any conditions precedent contained in this Indenture, the Intercreditor Agreement and any Security Documents. The Notes Collateral Agent shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture, the Intercreditor Agreement and the Security Documents unless expressly set forth hereunder or thereunder. The Notes Collateral Agent shall have the right at any time to seek instructions from the Holders with respect to the administration of this Indenture, the Security Documents and the Intercreditor Agreement.

(q) The parties hereto and the Holders hereby agree and acknowledge that the Notes Collateral Agent shall not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the Intercreditor Agreement, the Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture, the Intercreditor Agreement and the Security Documents, the Notes Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Notes Collateral Agent in the Collateral and that any such actions taken by the Notes Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Collateral.

(r) Upon the receipt by the Notes Collateral Agent of a written request of the Company signed by two Officers (a "*Security Document Order*"), the Notes Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Issue Date (it being agreed and understood that each of the Notes Collateral Agent and the Trustee is hereby authorized to execute and enter into, and shall execute and enter into, without further consent of any Holder, the Security Agreement, the Pledge Agreement and the Intercreditor Agreement, in each case, on the Issue Date). Such Security Document Order shall (i) state that it is being delivered to the Notes Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 10.7(r), and (ii) instruct the Notes Collateral Agent to execute and enter into such Security Document. Any such execution of a Security Document shall be at the direction and expense of the Company, upon delivery to the Notes Collateral Agent of an Officer's Certificate stating that all conditions precedent to the execution and delivery of the Security Documents have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Notes Collateral Agent to execute such Security Documents.

(s) Subject to the provisions of the applicable Security Documents and the Intercreditor Agreement, each Holder, by acceptance of the Notes, agrees that the Notes Collateral Agent shall execute and deliver the Intercreditor Agreement and the Security Documents to which it is a party and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreement or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable.

(t) After the occurrence of an Event of Default, the Trustee may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture, the Security Documents or the Intercreditor Agreement.

(u) The Notes Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Security Documents or the Intercreditor Agreement and to the extent not prohibited under the Intercreditor Agreement, for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of Section 6.10 and the other provisions of this Indenture.

(v) In each case that the Notes Collateral Agent may or is required hereunder or under the Security Documents or the Intercreditor Agreement to take any action (an "*Action*"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under the Security Documents or the Intercreditor Agreement, the Notes Collateral Agent may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Notes Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(w) Notwithstanding anything to the contrary in this Indenture or any other Notes Document, in no event shall the Notes Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the other Note Documents (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), nor shall the Notes Collateral Agent or the Trustee be responsible for, and neither the Notes Collateral Agent nor the Trustee makes any representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(x) Before the Notes Collateral Agent acts or refrains from acting in each case at the request or direction of the Company or the Guarantors, it may require an Officer's Certificate, which shall conform to the provisions of Section 12.5. The Notes Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(y) Notwithstanding anything to the contrary contained herein, the Notes Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee solely with respect to the Security Documents and the Collateral.

(z) Notwithstanding any other provision hereof, neither the Notes Collateral Agent nor the Trustee shall have any duties or obligations under hereunder or under the Intercreditor Agreement or any Security Document except those expressly set forth herein or therein. Without limiting the generality of the foregoing, in the event that the Notes Collateral Agent or the Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Notes Collateral Agent's or the Trustee's sole discretion may cause it to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("*CERCLA*"), 42 U.S.C. §9601, et seq., or otherwise cause it to incur liability under CERCLA or any other federal, state or local law, the Notes Collateral Agent and the Trustee each reserves the right, instead of taking such action, to either resign or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Neither the Notes Collateral Agent nor the Trustee shall be liable to any person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Notes Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for the Collateral to be possessed, owned, operated or managed by any person other than the Grantor, the holders of a majority of the aggregate principal amount of the Notes shall direct the Notes Collateral Agent or Trustee, as applicable, to appoint an appropriately qualified person who they shall designate to possess, own, operate or manage, as the case may be, the Collateral.

(aa) The rights, privileges, protections, immunities and benefits given to the Trustee on its own behalf (and not on behalf of the Holders), including, without limitation, its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Notes Collateral Agent as if the Notes Collateral Agent were named as the Trustee herein and the Security Documents were named as this Indenture herein.

SECTION 10.8 Voting.

In connection with any matter under the Security Documents requiring a vote of holders of Secured Obligations (as defined in the Security Agreement), the holders of such Secured Obligations shall be treated as a single class and the Holders shall cast their votes in accordance with this Indenture. The amount of the Notes to be voted by the Holders will equal the aggregate outstanding principal amount of the Notes. Following and in accordance with the outcome of the applicable vote under this Indenture, the Trustee shall vote the total amount of the Notes as a block in respect of any vote under the Security Documents

SECTION 10.9 No Impairment of the Security Interests.

Except as otherwise permitted under this Indenture, the Intercreditor Agreement and the Security Documents, neither the Company nor any of the Guarantors will be permitted to take any action, or knowingly omit to take any action, which action or omission would have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Trustee, the Notes Collateral Agent and the Holders.

SECTION 10.10 Insurance.

The Company shall maintain insurance, and cause each of its Restricted Subsidiaries to maintain insurance, with financially sound and reputable insurers (naming the Notes Collateral Agent as an additional insured, loss payee or mortgagee, as applicable), with respect to such of its properties, against such risks, casualties and contingencies and in such types and amounts as are consistent with sound business practice, it being understood that this Section shall not prevent the use of deductible or excess loss insurance and shall not prevent (i) the Company or any of its Subsidiaries from acting as a self-insurer or maintaining insurance with another Subsidiary or Subsidiaries of the Company so long as such action is consistent with sound business practice or (ii) the Company from obtaining and owning insurance policies covering activities of its Subsidiaries.

ARTICLE XI

GUARANTEES

SECTION 11.1 Guarantees.

(a) As of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantor hereby jointly and severally, fully, unconditionally and irrevocably guarantees the Notes and obligations of the Company hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee, to the Notes Collateral Agent and to the Trustee on behalf of such Holder, that: (i) the principal of and premium, if any, and interest, if any, on the Notes shall be paid in full when due, whether at Stated Maturity, by acceleration, call for redemption or otherwise (including, without limitation, the amount that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Law), together with interest on the overdue principal, if any, and interest on any overdue interest, if any, to the extent lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise. Each of the Guarantees shall be a guarantee of payment and not of collection.

(b) As of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) As of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantor hereby waives the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company or any other Person, protest, notice and all demands whatsoever and covenants that the Guarantee of such Guarantor shall not be discharged as to any Note except by complete performance of the obligations contained in such Note and such Guarantee or as provided for in this Indenture. As of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantor hereby agrees that, in the event of a default in payment of principal or premium, if any, or interest on such Note, whether at its Stated Maturity, by acceleration, call for redemption, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce each such Guarantor's Guarantee without first proceeding against the Company or any other Guarantor. Each Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor shall pay to the Trustee for the account of the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee, the Notes Collateral Agent or any of the Holders.

(d) If any Holder, the Notes Collateral Agent or the Trustee is required by any court or otherwise to return to the Company or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or any Guarantor, any amount paid by any of them to the Trustee or such Holder, the Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. This paragraph (d) shall remain effective notwithstanding any contrary action which may be taken by the Trustee or any Holder in reliance upon such amount required to be returned. This paragraph (d) shall survive the termination of this Indenture.

(e) As of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI for the purposes of the Guarantee of such Guarantor, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article VI, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Guarantee of such Guarantor.

SECTION 11.2 Execution and Delivery of Guarantee.

To evidence its Guarantee set forth in Section 11.1, each Guarantor agrees that this Indenture (or any supplement to it) shall be executed on behalf of such Guarantor by an officer of such Guarantor (or, if an officer is not available, by a board member or director) on behalf of such Guarantor by manual or facsimile signature. As of the date any Person executes a counterpart to this Indenture (or any supplement to it) as a "*Guarantor,*" such Guarantor hereby agrees that its Guarantee set forth in Section 11.1 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes. In case the officer, board member or director of such Guarantor whose signature is on this Indenture (or any supplement to it) no longer holds office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

If required by Section 4.17 hereof, the Company shall cause each Restricted Subsidiary described in Section 4.17 hereof to comply with the provisions of Section 4.17 hereof and this Article XI, to the extent applicable.

SECTION 11.3 Severability.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 11.4 Limitation of Guarantors' Liability.

Each Guarantor and by its acceptance hereof each Holder confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Trustee, the Holders and, as of the date any Person executes a counterpart to this Indenture as a "*Guarantor*," such Guarantors hereby irrevocably agree that the obligations of such Guarantor under its Guarantee (other than a company that is a direct or indirect parent of the Company) shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee, result in the obligations of such Guarantor under its Guarantee constituting a fraudulent transfer or conveyance.

SECTION 11.5 Guarantors May Consolidate, Etc., on Certain Terms.

Except as otherwise provided in this Section 11.5 or Section 11.6, a Guarantor may not sell or otherwise dispose of all or substantially all of its assets, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person unless:

(1) such Guarantor is the surviving entity; or (b) the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is a corporation or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia (such Guarantor or such Person, including the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made, as the case may be, being herein called the "*Successor Guarantor*");

(2) the Successor Guarantor (if other than such Guarantor) assumes all the obligations of such Guarantor under the Guarantee and this Indenture pursuant to agreements reasonably satisfactory to the Trustee;

(3) immediately after giving effect to such transaction, no Default or Event of Default exists;

(4) the Net Proceeds of any such sale or other disposition of a Guarantor are applied in accordance with the provisions of Section 4.10; and

(5) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the consolidation, merger or sale or disposition of all or substantially all of the assets or properties of such Guarantor complies with the provisions of this Indenture.

For purposes of this Section 11.5, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Restricted Subsidiaries of a Guarantor, which properties and assets, if held by such Guarantor instead of such Restricted Subsidiaries, would constitute all or substantially all of the properties and assets of such Guarantor on a consolidated basis, shall be deemed to be the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of such Guarantor.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the Successor Guarantor, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the relevant predecessor Guarantor, such Successor Guarantor shall succeed to and be substituted for such predecessor Guarantor with the same effect as if it had been named herein as a Guarantor. All the Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all such Guarantees had been issued at the Issue Date.

This Section 11.5 will not apply to a sale, assignment, transfer, conveyance, lease or other disposition of assets by a Guarantor to the Company or another Guarantor. In addition, clauses (3), (4) and (5) will not be applicable to any Restricted Subsidiary consolidating with, merging into or selling, assigning, transferring, conveying, leasing or otherwise disposing of all or part of its properties and assets to the Company or to another Restricted Subsidiary.

SECTION 11.6 Release of Guarantees.

Any Guarantor shall be automatically released and relieved of any obligations under this Guarantee, in the event that:

(a) the sale, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock (or any sale, disposition or other transfer of Capital Stock following which the applicable Guarantor is no longer a Restricted Subsidiary) or all or substantially of the assets of the applicable Guarantor if such sale, disposition or other transfer is made in compliance with the provisions of this Indenture;

(b) the Company designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in accordance with the provisions of this Indenture or any Restricted Subsidiary is or becomes an Excluded Subsidiary;

(c) the release or discharge of the guarantee by, or direct obligation of, such Guarantor of Indebtedness under the New Revolving Credit Facility (other than in connection with the payment in full of Indebtedness and commitments under, and the termination of, the New Revolving Credit Facility);

(d) in the case of any Restricted Subsidiary which after the Issue Date is required to guarantee the Notes pursuant to Section 4.17, the release or discharge of the guarantee by such Restricted Subsidiary of Indebtedness of the Company or any Restricted Subsidiary or the repayment of the Indebtedness or Disqualified Stock, in each case, which resulted in the obligation to guarantee the Notes, so long as all other Indebtedness incurred by such Restricted Subsidiary is permitted under this Indenture to be incurred by a Non-Guarantor Subsidiary;

(e) if the Company exercises its Legal Defeasance option or its Covenant Defeasance option pursuant to Section 8.2 or 8.3 or if its obligations under this Indenture are discharged in accordance with Section 8.8;

(f) the occurrence of a Covenant Suspension Event; provided that such Guarantee shall not be released pursuant to this clause for so long as such Guarantor is an obligor with respect to any Indebtedness under the New Revolving Credit Facility, and such Guarantee shall be reinstated upon the occurrence of the Reversion Date; or

(g) as described under Article IX.

Upon delivery to the Trustee of an Officer's Certificate to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.10, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee.

Any Guarantor not released from its obligations under this Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article XI.

SECTION 11.7 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that its guarantee and waivers pursuant to its Guarantee are knowingly made in contemplation of such benefits.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), such imposed duties shall control.

SECTION 12.2 Notices.

Any notice or communication by the Company, any Guarantor or the Trustee or Notes Collateral Agent to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next day delivery, to the others address:

If to the Company:

Turning Point Brands, Inc.
5201 Interchange Way
Louisville, KY 40229
Attention: President Chief Executive Officer
Email: rlavan@tpbi.com

With a copy to:

Milbank LLP
55 Hudson Yards
New York, New York 10001-2163
Facsimile: (212) 530-5219
Attention: Brett D. Nadritch

If to the Trustee or Notes Collateral Agent:

GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Email: clientservices.americas@glas.agency

The Company, Trustee or the Notes Collateral Agent, by notice to the other, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier promising next Business Day delivery.

Any notice or communication to a Holder shall be mailed by first class mail or by overnight air courier promising next Business Day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

The Trustee and the Notes Collateral Agent agree to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, pdf, facsimile transmission or other similar unsecured electronic methods, *provided*, *however*, that the Trustee and the Notes Collateral Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Company or the Guarantors elect to give the Trustee and the Notes Collateral Agent email or facsimile instructions (or instructions by a similar electronic method) and the Trustee and the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee and the Notes Collateral Agent's understanding of such instructions shall be deemed controlling. The Trustee and the Notes Collateral Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee and the Notes Collateral Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction (except when such reliance and compliance occurs as a result of Trustee or the Notes Collateral Agent's negligence). The Company and the Guarantors each agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee and the Notes Collateral Agent, including without limitation the risk of the Trustee and the Notes Collateral Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties (except when such reliance and compliance occurs as a result of the Trustee and the Notes Collateral Agent's negligence).

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notices or communications given to the Trustee or the Notes Collateral Agent, which shall be effective only upon actual receipt.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

SECTION 12.3 Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 12.4 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than the initial issuance of the Notes), the Company shall furnish to the Trustee upon request:

(a) an Officer's Certificate (which shall include the statements set forth in Section 12.5) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel.

SECTION 12.5 Statements Required in Certificate.

Each certificate with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

SECTION 12.6 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.7 No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, incorporator, stockholder, unitholder or member of the Company, any of its Subsidiaries or any of its direct or indirect parent Persons, as such, will have any liability for any obligations of the Company or any Guarantor under the Notes, this Indenture, the Guarantees, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws, and it is the view of the Commission that such waiver is against public policy.

SECTION 12.8 Governing Law.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE GUARANTEES. The parties to this Indenture each hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Guarantees or this Indenture, and all such parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court and hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. 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 Indenture shall affect any right that the Trustee, Agent, or Holder any otherwise have to bring any action or proceeding relating to this Indenture against the Company or any Guarantor or their properties in the courts of any jurisdiction to enforce any judgment, order or process entered by such courts situate within the State of New York or to enjoin any violations hereof or for relief ancillary hereto or otherwise to collect on loans or enforce the payment of any Notes or to enforce, protect or maintain their rights and claims or for any other lawful purpose.

SECTION 12.9 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.10 Successors.

All agreements of the Company and the Guarantors in this Indenture and the Notes and the Guarantees, as applicable, shall bind their respective successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

SECTION 12.11 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 12.12 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed Indenture by one party to any other party may be made by facsimile, electronic mail (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law), including DocuSign, or other transmission method, and the parties hereto agree that any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

SECTION 12.13 Table of Contents, Headings, Etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 12.14 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 12.14.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Holder list maintained under Section 2.5 hereunder.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 12.15 Waiver of Jury Trial.

EACH OF THE COMPANY, THE GUARANTORS, THE HOLDERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 12.16 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, pandemics, epidemics or recognized public health emergencies, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the U.S. banking industry to resume performance as soon as practicable under the circumstances.

SECTION 12.17 Calculations.

Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of Redemption Price and accrued interest payable on the Notes.

SECTION 12.18 USA Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[*Signatures on following page*]

Dated as of February 11, 2021

Turning Point Brands, Inc.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[*Signature Page to Turning Point Brands, Inc. Indenture*]

Dated as of February 11, 2021

GLAS TRUST COMPANY LLC, as Trustee and Notes Collateral Agent

By: /s/ Diana Gulyan
Name: Diana Gulyan
Title: AVP

[*Signature Page to Turning Point Brands, Inc. Indenture*]

Exhibit 10.1

Execution Version

CREDIT AGREEMENT

DATED AS OF FEBRUARY 11, 2021

AMONG

TURNING POINT BRANDS, INC.,
AS BORROWER,

VARIOUS LENDERS,

AND

BARCLAYS BANK PLC,
AS ADMINISTRATIVE AGENT

BARCLAYS BANK PLC,
AS LEAD ARRANGER AND BOOKRUNNER,

SENIOR SECURED CREDIT FACILITIES

TABLE OF CONTENTS

Page

CONTENTS

Page

SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time after the date hereof, this "**Agreement**") is entered into as of February 11, 2021, among TURNING POINT BRANDS, INC., a Delaware corporation (the "**Borrower**"), each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), BARCLAYS BANK PLC, as Administrative Agent and each L/C Issuer (as defined below).

WITNESSETH

Whereas, the Borrower is party to that certain Amended and Restated First Lien Credit Agreement, dated as of March 7, 2018, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, prior to the date hereof, among the Borrower, Fifth Third Bank, National Association, as administrative agent and the other guarantors and lenders named therein (the "**Existing Credit Agreement**");

Whereas, the Borrower wishes to refinance the Existing Credit Agreement by issuing 2026 Senior Secured Notes (as defined below) and obtaining Revolving Credit Commitments hereunder;

Whereas, the Borrower has requested that the Revolving Credit Lenders, from time to time on and after the Closing Date, lend to the Borrower and the L/C Issuer issue Letters of Credit for the account of the Borrower pursuant to the Revolving Credit Commitments hereunder and pursuant to the terms of, and subject to the conditions set forth in this Agreement.

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

ARTICLE 1.
DEFINITIONS AND ACCOUNTING TERMS

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

"**2026 Senior Secured Notes**" means the Borrower's 5.625% Senior Secured Notes in an aggregate principal amount of $250,000,000 due 2026 issued pursuant to that certain 2026 Senior Secured Notes Indenture on the Closing Date.

"**2026 Senior Secured Notes Indenture**" means that certain indenture among the Borrower, as issuer, and GLAS Trust Company LLC, as Trustee, dated as of the date hereof, as subsequently amended or supplemented from time to time.

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

(a) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized in connection with, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

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

"**Act**" has the meaning specified in Section 10.19.

"**Additional Refinancing Lender**" has the meaning specified in Section 2.17.

"**Administrative Agent**" means Barclays Bank PLC, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

"**Administrative Questionnaire**" means an Administrative Questionnaire in substantially the form of Exhibit D-2 or any other form approved by the Administrative Agent.

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

"**Affiliate Transaction**" has the meaning specified in Section 7.08(a).

"**Agency Fee Letter**" means the Administrative Agency Fee Letter, dated February 11, 2021, between the Borrower and the Administrative Agent.

"**Agents**" means the Administrative Agent and the Collateral Agent and for purposes of Article 10, the Arranger.

"**Aggregate Commitments**" means the Commitments of all the Lenders.

"**Agreement**" has the meaning specified in the introductory paragraph hereto.

"**Agreement Currency**" has the meaning specified in Section 10.20.

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

"**Alternative Currency**" means Canadian Dollars, Euros and Pound Sterling.

"**Anti-Corruption Laws**" means any laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption of public officials, including without limitation the U.S. Foreign Corrupt Practices Act of 1977, as amended.

"**Anti-Terrorism Laws**" has the meaning specified in Section 5.19.

"**Applicable Calculation Date**" means the applicable date of calculation for (i) the Secured Leverage Ratio, (ii) the Consolidated Leverage Ratio, (iii) the Fixed Charge Coverage Ratio, (iv) Consolidated EBITDA or (v) Consolidated Total Assets.

"**Applicable Measurement Period**" means the most recently completed four consecutive fiscal quarters of the Borrower immediately preceding the Applicable Calculation Date for which internal financial statements are available (other than for purposes of calculating ratios pursuant to Section 7.11, which shall look to the most recently completed four fiscal quarters of the Borrower).

"**Applicable Percentage**" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the aggregate principal amount of all Commitments and, if applicable and without duplication, Loans of such Lender under the applicable Facility or Facilities at such time; *provided* that, with respect to any Revolving Credit Facility, if the commitment of each Revolving Credit Lender to make Revolving Credit Loans under such Revolving Credit Facility and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments in respect thereof have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of such Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender immediately prior to such termination and after giving effect to any subsequent assignments. The initial Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility is set forth opposite the name of such Revolving Credit Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Credit Lender becomes a party hereto, as applicable. The Applicable Percentage of any Revolving Credit Lender is subject to adjustment as provided in Section 2.16.

"**Applicable Rate**" means in respect of Revolving Credit Loans, (i) from the Closing Date to the date following the Closing Date on which a Compliance Certificate is delivered pursuant to Section 6.02(a) in respect of the first full fiscal quarter ending after the Closing Date, 2.50% per annum for Base Rate Loans that are Revolving Credit Loans and 3.50% per annum for Eurodollar Rate Loans that are Revolving Credit Loans and (ii) thereafter, the applicable percentage per annum set forth below determined by reference to the Secured Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Secured Leverage Ratio	Applicable Rate	
		Eurodollar Rate	**Base Rate**
1	If the Secured Leverage Ratio is $\geq$ 3.00	3.50%	2.50%
2	If the Secured Leverage Ratio is < 3.00 and $\geq$ 2.50	3.25%	2.25%

3	If the Secured Leverage Ratio is < 2.50 and ≥ 2.00	3.00%	2.00%
4	If the Secured Leverage Ratio is < 2.00	2.75%	1.75%

Any increase or decrease in the Applicable Rate resulting from a change in the Secured Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided, however,* that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

Furthermore, and notwithstanding anything to the contrary contained in this definition, the Applicable Rate in respect of any Incremental Term Loans, any Refinancing Term Loans or any Other Revolving Commitments (and any Other Revolving Loans thereunder) shall be the applicable percentages per annum set forth in the relevant Joinder Agreement or Refinancing Amendment, as applicable.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

"**Applicable Revolving Credit Percentage**" means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender's Applicable Percentages in respect of the Revolving Credit Facilities at such time.

"**Applicable Time**" means, with respect to any borrowings or payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be reasonably determined by the Administrative Agent or the applicable L/C Issuer to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"**Appropriate Lender**" means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, and (b) with respect to Letters of Credit, (i) the relevant L/C Issuer and (ii) the Revolving Credit Lenders.

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

"**Arranger**" means Barclays Bank PLC in its capacity as lead arranger and bookrunner.

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

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D-1 or any other form approved by the Administrative Agent.

"**Auction**" has the meaning specified in Section 10.06(b)(vii)(A).

"**Auto-Extension Letter of Credit**" has the meaning specified in Section 2.03(b)(iii).

"**Availability Period**" means, in respect of any Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date in respect of such Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments in respect of such Revolving Credit Facility pursuant to Section 2.06 and (iii) the date of termination of the commitment of each Revolving Credit Lender in respect of such Revolving Credit Facility to make Revolving Credit Loans under such Revolving Credit Facility and of the obligation of the L/C Issuers to make L/C Credit Extensions in respect of such Revolving Credit Facility pursuant to Section 8.02.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (d) of Section 3.08.

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

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

"**Base Rate**" means, with respect to Loans denominated in U.S. Dollars, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* ½ of 1.00% and (c) the Eurodollar Rate that would be payable on such day for a Eurodollar Rate Loan with a one-month Interest Period *plus* 1.00%; *provided* that, if any such rate is less than zero, Base Rate will be deemed to be zero.

"**Base Rate Loan**" means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

"**Benchmark**" means, initially, U.S.D. LIBOR; *provided* that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to U.S.D. LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of Section 3.08.

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

(a) the sum of: (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

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

(c) the sum of: (i) 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 U.S. dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

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

(a) 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:

(1) 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;

(2) 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

(b) for purposes of clause (c) 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 U.S. dollar-denominated syndicated credit facilities;

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

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

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

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) 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);

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

(c) in the case of an Early Opt-in Election, the sixth (6^{th}) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5^{th}) 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 (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

(a) 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);

(b) 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 Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

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

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

"**Benchmark Unavailability Period**" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) 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 this Section titled "Benchmark Replacement Setting" 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 3.08.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

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

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

"**Board of Directors**" means:

(a) with respect to a corporation, the Board of Directors of the corporation;

(b) with respect to a partnership, the Board of Directors of the general partner of the partnership; and

(c) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Borrower**" has the meaning specified in the introductory paragraph hereto.

"**Borrower Materials**" has the meaning specified in Section 6.02.

"**Borrowing**" means a Revolving Credit Borrowing of a particular Class or an Incremental Borrowing, as the context may require.

"**Business Day**" means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (b) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in U.S. Dollar deposits in the London interbank market.

"**Capital Stock**" means:

(a) in the case of a corporation, capital stock;

(b) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP (except for temporary treatment of construction-related expenditures under EITF 97-10, "The Effect of Lessee Involvement in Asset Construction," which will ultimately be treated as operating leases upon a sale-leaseback transaction); *provided, however,* that, for the avoidance of doubt, any obligations relating to a lease that would have been accounted for by the Borrower as an operating lease under GAAP as in existence on December 31, 2018, shall be accounted for and treated as an operating lease and not a Capitalized Lease Obligation.

"**CARES ACT**" means the Coronavirus Aid, Relief, and Economic Security Act of 2020, as amended (including any successor thereto), and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, regardless of the date enacted, adopted, issued or implemented.

"**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or any L/C Issuer (as applicable) and the Revolving Credit Lenders, as collateral for L/C Obligations, Obligations in respect of Revolving Credit Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the applicable L/C Issuer benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable L/C Issuer.

"**Cash Contribution Amount**" means the aggregate amount of cash contributions made to the capital of the Borrower or any Guarantor described in the definition of "Contribution Indebtedness."

"**Cash Equivalents**" means:

(a) United States dollars or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(b) securities issued or directly and fully and unconditionally guaranteed or insured by the government or any agency or instrumentality of the United States, the United Kingdom or any member state of the European Union whose legal tender is the euro having maturities of not more than 36 months from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of 36 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 36 months and overnight bank deposits, in each case, with any Lender or with any commercial bank having capital and surplus in excess of $100,000,000;

(d) repurchase obligations for underlying securities of the types described in clauses (a) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

(e) commercial paper maturing within 36 months after the date of acquisition and having a rating of at least A-1 from Moody's or P-1 from S&P;

(f) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 12 months or less from the date of acquisition;

(g) instruments equivalent to those referred to in clauses (a) to (f) above denominated in euro or pounds sterling or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction; and

(h) investment in funds which invest substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (g) of this definition.

"**Cash Management Agreement**" means any agreement to provide cash management services, including treasury, depository, overdraft, card services (including services related to credit cards, including purchasing and commercial cards, prepaid cards, including payroll, stored value and gift cards, merchant services processing and debit cards), electronic funds transfer and other cash management arrangements.

"**Cash Management Bank**" means any Person that, (a) at the time it enters into a Cash Management Agreement with any Loan Party, is a Lender, the Administrative Agent or an Arranger or an Affiliate of a Lender, the Administrative Agent or an Arranger, in its capacity as a party to such Cash Management Agreement, and (b) in the case of any Cash Management Agreement entered into prior to, and existing on, the Closing Date, any Person that is, on the Closing Date, a Lender, the Administrative Agent or an Arranger or Affiliate of a Lender, the Administrative Agent or an Arranger, in its capacity as a party to such Cash Management Agreement.

"**Cash Management Obligations**" means any obligations of the Borrower or another Loan Party pursuant to a Cash Management Agreement.

"**Cash Management Services**" means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called "procurement card" or "P-card"), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds and obligations in respect of any other services related, ancillary or complementary to the forgoing.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and any rules or regulations promulgated thereunder.

"**CFC**" shall mean a "controlled foreign corporation" as defined in Section 957 of the Code.

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

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

(a) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) other than to the Borrower or its Subsidiaries or a Permitted Holder;

(b) the Borrower becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group other than a Permitted Holder (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Borrower, in each case, other than an acquisition where the holders of the Voting Stock of the Borrower as of immediately prior to such acquisition hold 50% or more of the Voting Stock of the ultimate parent of the Borrower or successor thereto immediately after such acquisition (provided no holder of the Voting Stock of the Borrower as of immediately prior to such acquisition owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of the Borrower immediately after such acquisition); or

(c) a "Change of Control", "Change in Control" or other substantively similar term under the 2026 Senior Secured Notes Indenture or any other Indebtedness of the Borrower or any of its Restricted Subsidiaries with an aggregate principal amount in excess of the Threshold Amount (to the extent that the occurrence of such event permits the holders of Indebtedness thereunder to accelerate the maturity thereof or to resell such other Indebtedness to the Borrower, or requires the Borrower to repay, or offer to repurchase, such Indebtedness prior to the stated maturity thereof).

Notwithstanding the preceding or any provision of Rule 13(d)(3) of the Exchange Act (or any successor provision), (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person (the "Subject Person") held by a parent of such Subject Person unless it owns more than 50% of the total voting power of the Voting Stock of such parent and (iii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Company owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred.

"**Civil Asset Forfeiture Reform Act**" means the Civil Asset Forfeiture Reform Act of 2000 (18 U.S.C. Sections 983 et seq.), as amended from time to time, and any successor statute.

"**Class**" (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, Incremental Revolving Credit Commitments, Other Revolving Commitments of a given Refinancing Series, Incremental Term Loan Commitments or Refinancing Term Commitments of a given Refinancing Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans, Incremental Revolving Loans, Other Revolving Loans of a given Refinancing Series, Incremental Term Loans or Refinancing Term Loans of a given Refinancing Series. Loans that are not fungible for United States federal income tax purposes shall be construed to be in different Classes or tranches. Commitments that, if and when drawn in the form of Loans, would yield Loans that are construed to be in different Classes or tranches pursuant to the immediately preceding sentence shall be construed to be in different Classes or tranches of Commitments corresponding to such Loans. There shall be no more than an aggregate of two Classes of revolving credit facilities and two Classes of term loan facilities under this Agreement.

"**Closing Date**" means the first date all the conditions precedent referred to in Section 4.01 are satisfied or waived in accordance with Section 10.01, which date is February 11, 2021.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means all of the "Collateral" referred to in the Security Documents and all of the other property provided as collateral security under the terms of the Security Documents.

"**Collateral Agent**" means Barclays Bank PLC.

"**Commitment**" means a Revolving Credit Commitment, an Incremental Revolving Credit Commitment, an Incremental Term Loan Commitment, a Refinancing Term Commitment or an Other Revolving Commitment, as the context may require.

"**Commitment Fee Rate**" means (a) from the Closing Date to the date following the Closing Date on which a Compliance Certificate is delivered pursuant to Section 6.02(a) in respect of the first full fiscal quarter following the Closing Date, 0.45% and (b) thereafter, the applicable percentage per annum set forth below determined by reference to the Secured Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Secured Leverage Ratio	Commitment Fee
1	If the Secured Leverage Ratio is ≥ 3.00	0.45%
2	If the Secured Leverage Ratio is < 3.00 and ≥ 2.50	0.40%
3	If the Secured Leverage Ratio is < 2.50 and ≥ 2.00	0.35%
4	If the Secured Leverage Ratio is < 2.00	0.30%

Any increase or decrease in the Commitment Fee Rate resulting from a change in the Secured Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided, however,* that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

Notwithstanding anything to the contrary contained in this definition, the determination of the Commitment Fee Rate for any period shall be subject to the provisions of Section 2.10(b).

"**Committed Loan Notice**" means a notice of (a) a Revolving Credit Borrowing or (b) an Incremental Borrowing, which shall be substantially in the form of Exhibit A-1.

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

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit C.

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

(a) Taxes paid and the provision for any type of taxes, of such Person for such period deducted in computing Consolidated Net Income; plus

(b) Consolidated Interest Expense of such Person for such period to the extent the same was deducted in calculating such Consolidated Net Income; plus

(c) Consolidated depreciation and amortization expense of such Person for such period to the extent such depreciation, amortization and non-cash charges were deducted in computing Consolidated Net Income; plus

(d) any extraordinary, unusual, infrequently occurring or nonrecurring loss, charge, payments or expense or any losses, expenses, payments or charges incurred in connection with any Equity Offering, Permitted Investment, Restricted Payment, acquisition, disposition recapitalization or Indebtedness permitted to be incurred hereunder (in each case whether or not consummated and including expenses incurred in the connection with the Transactions), COVID-19 or the Transactions and, in each case, deducted in such period in computing Consolidated Net Income; plus

(e) the amount of any restructuring charges, accruals or reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment cost, excess pension charges, contract termination costs, future lease commitments, integration and business optimization costs and costs to close or consolidate facilities and relocate employees) deducted in such period in computing Consolidated Net Income; plus or minus

(f) any other noncash charges, expenses, write-down or losses (including any impairment charges and the impact of purchase accounting, including, but not limited to, the amortization of inventory step-up and loss of profit on the acquired inventory and unrealized losses of the TMSA Account) or deferred cash charges, expenses or losses reducing Consolidated Net Income for such period (excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, other than straight-line rent expense determined in accordance with GAAP to the extent such accruals exceed the related rent payments for the applicable period; provided, however, that the Consolidated EBITDA for any period shall be reduced to the extent rent payments exceed rent accruals for such period irrespective of the accounting treatment of such rent payments) less all non-cash items of income of such Person and its Restricted Subsidiaries; plus

(g) taxes paid during the period in respect of deferred tax obligations stemming from CARES ACT relief originally due but deferred from periods prior to the Closing Date; plus

(h) the amount of any non-controlling interest expense consisting of income attributable to non-controlling interests of third parties in any non-wholly owned Subsidiary; plus

(i) (x) costs incurred or otherwise associated with the launch of new products or product lines and (y) costs associated with applications related to Food and Drug Administration Pre-Market Tobacco Applications and similar costs incurred in connection with the receipt of regulatory approval for products; plus

(j) corporate and vapor restructuring expenses including severance and inventory reserves; plus

(k) the amount of "run rate" cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies related to the Transactions, any Specified Transaction, any restructuring, cost saving initiative or other initiative projected by the Borrower in good faith to be realized as a result of actions taken, committed to be taken or planned to be taken, in each case on or prior to the date that is 18 months after the end of the relevant period (including actions initiated prior to the Closing Date) (which cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies shall be added to Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; provided that such cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies are reasonably identifiable and quantifiable and no cost savings, operating expense reductions, other operating improvements, revenue enhancements or synergies shall be added pursuant to this clause (k) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions, other operating improvements, revenue enhancements or synergies that are included in any other "pro forma" (it being understood and agreed that "**Run Rate**" shall mean the full recurring benefit that is associated with any action taken); provided, further, that the aggregate amount of "run rate" cost savings, operating expense reductions, other operating improvements, revenue enhancements and synergies related to any Specified Transaction, any restructuring, cost saving initiative or other initiative added pursuant to this clause (k) shall not exceed 25% of Consolidated EBITDA (calculated after giving effect to any addback under this clause for any Applicable Measurement Period); plus or minus

(l) noncash items increasing Consolidated Net Income of such Person for such period (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges made in any prior period) or which will result in the receipt of cash in a future period or the amortization of lease incentives;

provided, that cancellation of indebtedness income arising from Loan purchases pursuant to Section 10.06(b)(vii) will not increase Consolidated EBITDA.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, the sum, without duplication, of: (a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period (including amortization of original issue discount, noncash interest payments (other than imputed interest as a result of purchase accounting), commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, the interest component of Capitalized Lease Obligations, net payments (if any) pursuant to interest rate Hedging Obligations (any net receipts pursuant to such interest rate Hedging Obligations shall be included as a reduction to Consolidated Interest Expense), amortization of deferred financing fees or expensing of any bridge or other financing fees and any loss on the early extinguishment of Indebtedness and amortization of any original issue discount in connection with the Transactions) *plus* (b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, *less* (c) interest income of such Person and its Restricted Subsidiaries actually received or receivable in cash for such period.

"**Consolidated Leverage Ratio**" means, with respect to and Person, as of any date, means the ratio of (a) Consolidated Total Debt of such Person and its Restricted Subsidiaries minus unrestricted cash and Cash Equivalents of such Person and its Restricted Subsidiaries, in each case, computed as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date to (b) EBITDA of such Person for the four full fiscal quarters for which internal financial statements prepared in accordance with GAAP are available immediately preceding such date.

"**Consolidated Net Income**" means, with respect to any Person for any period, the aggregate of the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided, however*, that:

(a) any net after-tax extraordinary, unusual or nonrecurring gains, losses, income, costs, charges or expenses (including, without limitation, restructuring, severance, relocation, consolidation, transition, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, new product launches, unrealized losses on the TMSA Account, and any fees, expenses, or charges related to the Transactions or otherwise (including any transition-related expenses incurred before, on or after the Closing Date), and litigation settlements or losses) shall be excluded;

(b) the Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principle(s) during such period;

(c) costs associated with, and any net after-tax gains or losses attributable to, asset dispositions or abandonments other than in the ordinary course of business (as determined in good faith by the Board of Directors of the Person) and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person shall be excluded;

(d) the Consolidated Net Income for such period of any Person that is not a Restricted Subsidiary of such Person, or that is accounted for by the equity method of accounting, shall be excluded; provided that, to the extent not already included, Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or payments that are actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof in respect of such period (subject in the case of dividends paid or distributions made to a Restricted Subsidiary (other than a Guarantor) to the limitations contained in clause (5) below);

(e) solely for the purpose of determining the amount available for Restricted Payments that are permitted to be made under Section 7.06 the Consolidated Net Income for such period of any Restricted Subsidiary (other than a Guarantor) shall be excluded if the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Consolidated Net Income is not wholly permitted at the date of determination without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived and other than restrictions pursuant to the Agreement, the Security Documents or the 2026 Senior Secured Notes Indenture and related documentation; provided that the Consolidated Net Income of such Person shall be, after giving effect to any applicable exclusion contained in clause (7) of the definition of "Consolidated EBITDA," increased by the amount of dividends or similar distributions that are actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof, subject to the provisions of this clause (5) in respect of such period, to the extent not already included therein;

(f) non-cash compensation charges, including any such charges arising from stock options, restricted stock grants or other equity-incentive programs and accruals for bonuses payable in a future period (provided that the amount paid in respect of such bonuses shall be included in the period paid) and income (loss) attributable to deferred compensation shall be excluded;

(g) any net after-tax gains or losses and all fees and expenses or charges relating thereto attributable to the early extinguishment of Indebtedness or Hedging Obligations shall be excluded;

(h) the effect of any non-cash items resulting from any amortization, impairment, write-up, write-down or write-off of assets (including investment securities), including intangible assets, goodwill and deferred financing costs in connection with the Transactions or any future acquisition, disposition, merger, consolidation, Investment or similar transaction or any other non-cash impairment charges incurred subsequent to the Closing Date resulting from the application at SFAS Nos. 141, 142 or 144 (excluding any such non-cash item to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such item is subsequently reversed) shall be excluded;

(i) any unrealized net gain or loss resulting from Hedging Obligations permitted by Section 7.03(b)(ix) (including pursuant to the application of SFAS No. 133) shall be excluded;

(j) any net after-tax income or loss from discontinued operations and any net after-tax gains or losses on disposal of discontinued operations shall be excluded;

(k) expenses and lost profits with respect to liability or casualty events or business interruption shall be disregarded (x) to the extent covered by insurance and actually reimbursed or (y) if such Person has made a determination that there exists reasonable evidence that such amount will be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the insurer in writing and (b) is in fact reimbursed within 365 days following the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period); provided, that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (11);

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

(m) [reserved];

(n) non-cash charges for deferred tax asset valuation allowances shall be excluded;

(o) any fees, expenses (including any transaction or retention bonus or similar payment) or charges incurred during such period, or any amortization thereof for such period, in connection with the Transactions or any acquisition, non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investment, recapitalization, asset disposition, non-competition agreement, issuance, incurrence or repayment of Indebtedness, issuance of Capital Stock, refinancing transaction or amendment or modification of or waiver or consent relating to any debt instrument, shall be excluded;

(p) any net pension costs or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) and any other non-cash items of a similar nature shall be excluded; and

(q) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures (provided, in each case, that the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Income for the period in which such cash payment was made) shall be excluded.

In addition, to the extent not already included in Consolidated Net Income, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance or reimbursement of expenses and charges that are covered by indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted hereunder.

"**Consolidated Total Assets**" means the total consolidated assets of the Borrower and its Restricted Subsidiaries as shown on the most recent balance sheet determined in accordance with GAAP determined on a pro forma basis as set forth in Section 1.09.

"**Consolidated Total Debt**" means, with respect to any Person as of any date of determination, the sum, without duplication, of (i) the total amount of Indebtedness of such Person and its Restricted Subsidiaries, *plus* (ii) the total amount of Indebtedness of any other Person, to the extent that such Indebtedness has been Guaranteed by the referent Person or one or more of its Restricted Subsidiaries, *plus* (iii) the aggregate liquidation value of all Disqualified Stock of such Person and all preferred stock of Restricted Subsidiaries of such Person, in each case, determined on a consolidated basis in accordance with GAAP.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**Primary Obligations**") of any other Person (the "**Primary Obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Contribution Indebtedness**" means Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount not greater than the aggregate amount of cash contributions (other than Excluded Contributions and Refunding Capital Stock) made to the capital of the Borrower or such Guarantor after the Closing Date.

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

"**Controlled Substances Act**" means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

"**Conversion/Continuation Notice**" means a notice of (a) a conversion of Loans of a particular Class from one Type to the other or (b) a continuation of Eurodollar Rate Loans pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A-2 or any other form approved by the Administrative Agent.

"**Convertible Senior Notes**" means the Borrower's 2.50% Convertible Senior Notes due 2024.

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

"**COVID-19 Relief Funds**" means funds or credit or other support received by the Borrower or any Subsidiary of the Borrower from, or with the credit or other support of, any governmental authority, and incurred with the intent to mitigate through liquidity or other financial relief the impact of the COVID-19 global pandemic on the business and operations of the Borrower and its Subsidiaries.

"**Credit Agreement Refinancing Indebtedness**" means Indebtedness incurred solely by the Borrower in the form of one or more series or classes of Loans or Commitments under this Agreement, in each case, issued, incurred or otherwise obtained (including by means of the amendment, extension, refinancing, or renewal of existing Indebtedness) in exchange for, or to refinance, in whole or part, existing Term Loans (and/or Term Commitments) and Revolving Credit Loans (and/or Revolving Credit Commitments), or any then-existing Credit Agreement Refinancing Indebtedness ("**Refinanced Debt**"); *provided* that solely for purposes of Section 2.17 (i) such Indebtedness is secured by the Collateral on a pari passu basis with the Liens securing the other Obligations hereunder and is not secured by any property or assets other than the Collateral, (ii) such Indebtedness is not guaranteed by any Person other than the Guarantors, (iii) such Indebtedness is incurred solely to refinance, in whole or part, Refinanced Debt, and the proceeds thereof shall be substantially contemporaneously applied to prepay such Refinanced Debt, interest and any premium (if any) thereon, and fees and expenses incurred in connection with such Indebtedness, and any Term Commitments and/or Revolving Credit Commitments so refinanced shall be concurrently terminated, (iv) such Indebtedness (including, if such Indebtedness includes any Revolving Credit Commitments, the unused amount of such Revolving Credit Commitments) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (and, in the case of Refinanced Debt consisting, in whole or in part, of unused Revolving Credit Commitments, the applicable amount thereof), *plus* accrued and unpaid interest, any premium, and fees and expenses reasonably incurred in connection therewith, (v) such Indebtedness has a maturity no earlier, and a Weighted Average Life to Maturity no shorter, than the Refinanced Debt, (vi) the terms and conditions of such Indebtedness (except as otherwise provided above and with respect to pricing, premiums, fees, rate floors and optional prepayment or redemption terms) are substantially identical to the terms and conditions applicable to the Refinanced Debt, unless (x) such terms apply only after the Latest Maturity Date at the time such Indebtedness is established or (y) this Agreement is amended so that such terms are also applicable for the benefit of the Lenders under any then-existing Facilities and (vii) such Refinanced Debt shall be repaid, all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, and all commitments in respect thereof shall be terminated, on the date such Indebtedness is incurred.

"**Credit Extension**" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

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

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

"**Declined Proceeds**" has the meaning specified in Section 2.05(b)(vi).

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (x) with respect to principal, interest or other fees attributable to a Facility, the Base Rate *plus* the Applicable Rate applicable to Base Rate Loans under such Facility *plus* 2.00% per annum and (y) with respect to all other Obligations, (i) the Base Rate *plus* (ii) the Applicable Rate applicable to Base Rate Loans under the Revolving Credit Facility *plus* (iii) 2.00% per annum, in each case to the fullest extent permitted by applicable Laws, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate *plus* 2.00% per annum.

"**Defaulting Lender**" means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit, within three Business Days of the date required to be funded by it hereunder, unless, with respect to funding obligations in respect of Loans, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has provided written notice to the Borrower and the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such written notice or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after request by the Administrative Agent made in good faith belief that such Lender may not honor its funding obligations, to confirm in a manner reasonably satisfactory to the Administrative Agent that it 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 of such written confirmation by the Administrative Agent) or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgements or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"**Designated Non-Cash Consideration**" means the fair market value (as determined by the Borrower in good faith) of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 7.05(j) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Officer of the Borrower setting forth the basis of such valuation (which amount will be reduced by the amount of cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to cash or Cash Equivalents).

"**Designated Preferred Stock**" means Preferred Stock of the Borrower, any Restricted Subsidiary or any parent entity (in each case other than Disqualified Stock) that is issued after the Closing Date for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Borrower or the applicable parent entity, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in Section 7.06(a), (b) and (c).

"**Disposition**" means (i) the sale, conveyance, transfer or other voluntary disposition (whether in a single transaction or a series of related transactions) of property or assets of the Borrower (other than the sale of Equity Interests of the Borrower) or any of its Restricted Subsidiaries (each referred to in this definition as a "disposition") or (ii) the issuance or sale of Equity Interests of any Restricted Subsidiary (whether in a single transaction or a series of related transactions and other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 7.03 or the issuance of directors' qualifying shares and shares issued to foreign nationals as required by applicable law). None of (i) the unwinding of Hedging Obligations, (ii) the issuance or sale of any Permitted Convertible Indebtedness by the Borrower or any of its Subsidiaries, (iii) the sale of any Permitted Warrant Transaction by the Borrower, (iv) the purchase of any Permitted Bond Hedge Transaction nor (v) the performance by the Borrower and/or any Subsidiary thereof of the Borrower's or such Subsidiary's obligations under any Permitted Convertible Indebtedness, any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction or any termination of any such transaction, shall constitute, or be deemed to constitute, a "Disposition".

"**Disqualified Lender**" means (a) any Person (or its Subsidiaries and Affiliates) who is an operating competitor of the Borrower or its Subsidiaries and that is separately identified by the Borrower to the Administrative Agent by name in writing prior to the Closing Date (which list of operating competitors may be supplemented by the Borrower after the Closing Date by means of a written notice to the Administrative Agent; *provided* that such supplementation shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation in the Loans or Commitments hereunder) and (b) with respect to each Person that is a "Disqualified Lender" pursuant to clause (a) above, any of its Affiliates (other than any Affiliate of a Person that is solely a "Disqualified Lender" pursuant to clause (a) above and is a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its business and for purposes hereof, a "vulture fund" or Person that purchases distressed debt in the ordinary course of its business shall be deemed not to be a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its business) that is either (i) identified to the Administrative Agent by name in writing by the Borrower from time to time (*provided* that such supplementation shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation in the Loans hereunder) or (ii) clearly identifiable as an Affiliate of such Disqualified Lender solely on the basis of such Affiliate's name.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is putable or exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable (other than as a result of a Change of Control or Asset Sale if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is putable or exchangeable) provide that such Person may not redeem or repurchase any such Capital Stock (and all securities into which it is convertible or for which it is putable or exchangeable) pursuant to such provision prior to compliance by such Person with the provisions of Section 7.04 and such repurchase or redemption complies with Section 7.06), in each case pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than as a result of a Change of Control or Asset Sale), in whole or in part, or (c) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Borrower or a Restricted Subsidiary), in each case prior to the date 91 days after the earlier of the latest then applicable Maturity Date are no longer outstanding; *provided, however*, that (i) any Capital Stock held by any future, current or former employee, director, officer, manager, independent contractor or consultant of the Borrower, any of its Subsidiaries, any of their direct or indirect parent companies or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Borrower or a Restricted Subsidiary, in each case pursuant to any stock subscription or shareholders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries or in order to satisfy applicable statutory or regulatory obligations, (ii) only the portion such Capital Stock that so matures or is mandatorily redeemable, is so redeemable at the option of the holder thereof prior to such date, or is so convertible or exchangeable will be deemed to constitute Disqualified Stock, and (iii) any class of such Capital Stock that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock of the Borrower or any of its direct or indirect parent entities that is not Disqualified Stock will not be deemed to constitute Disqualified Stock.

"**Domestic Subsidiary**" means any direct or indirect Subsidiary of the Borrower that was formed under the laws of the United States, any state of the United States or the District of Columbia.

"**Early Opt-in Election**" means, if the then-current Benchmark is U.S.D. LIBOR, the occurrence of:

(a) 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 termSOFR 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

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from U.S.D. LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

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

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

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

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

"**Environmental Claim**" means any written notice, claim, demand, action, litigation, toxic tort, proceeding, demand, request for information, complaint, citation, summons, investigation, notice of non-compliance or violation, cause of action, consent order, consent decree, investigation, or other proceeding by any Governmental Authority or any other Person, arising out of, based on or pursuant to any Environmental Law or related in any way to any actual, alleged or threatened Environmental Liability.

"**Environmental Laws**" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, agreements or governmental restrictions relating to human health and safety, pollution, the protection of the environment or the release of any materials into the environment, including those related to hazardous materials, substances or wastes and air and water emissions and discharges.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), obligation, responsibility or cost directly or indirectly resulting from or based upon (a) any violation of, or liability under, any Environmental Law, (b) the generation, use, handling, transportation, storage, distribution, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment, (e) natural resource damage or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization issued pursuant to or required under any Environmental Law.

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

"**Equity Offering**" means any public or private sale of common or preferred stock (other than Disqualified Stock) of the Borrower or common stock or Preferred Stock of any of its direct or indirect parent entities (excluding Disqualified Stock of such entity), other than (1) public offerings with respect to common stock of the Borrower or of any of its direct or indirect parent entities registered on Form S-4 or Form S-8, (2) any such public or private sale that constitutes an Excluded Contribution or (3) an issuance to any Subsidiary of the Borrower.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

"**ERISA Event**" means the occurrence of any of the following (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification concerning the imposition upon the Borrower or any of its ERISA Affiliates of any liability with respect to such withdrawal, or a determination that a Multiemployer Plan is or is expected to be insolvent within the meaning of Title IV of ERISA; (d) the filing of a notice of intent to terminate, or the treatment of a Pension Plan amendment as a termination of, any Pension Plan, under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that the adjusted funding target attainment percentage (as defined in Section 436(j)(2) of the Code) of any Pension Plan is both less than 80% and such Pension Plan is more than $20,000,000 underfunded on an adjusted funding target attainment percentage basis; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) the failure to satisfy the Pension Funding Rules with respect to any Pension Plan, whether or not waived.

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

"**Eurodollar Rate**" means for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by multiplying (I)(x) (i) the rate per annum equal to the rate determined by the Administrative Agent to be the offered Screen Rate for deposits (for delivery on the first day of such period) (such page currently being in relation to a Loan denominated in U.S. Dollars, as currently published on Reuters Screen LIBOR01 Page or LIBOR02 Page (or any successor thereto) and (ii) in relation to a Loan denominated in Euros, the EURIBOR01 page) (the "**LIBO Rate**") with a term equivalent to such Interest Period in the relevant currency, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (y) in the event the rates referenced in the preceding clause (x) do not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays an average London Interbank Offered Rate for deposits (for delivery on the first day of such period) with a term equivalent to such Interest Period in such currency, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (z) in the event the rates referenced in the preceding clauses (x) and (y) are not available, the rate per annum equal to the offered quotation rate by first class banks in the London interbank market to the Administrative Agent for deposits (for delivery on the first day of the relevant period) in such currency of amounts in Same Day Funds comparable to the principal amount of the applicable Loan of the Administrative Agent for which the Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date; *provided* that, if the rates referenced in clause (x) shall not be available at the applicable time for the applicable Interest Period (an "**Impacted Interest Period**"), then the Eurodollar Rate for such currency and Interest Period shall be the Interpolated Rate by (II) the Statutory Reserve Rate; *provided, however*, notwithstanding the foregoing, at no time will the Eurodollar Rate be deemed to be less than zero percent per annum.

"**Eurodollar Rate Loan**" means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on the definition of "Eurodollar Rate."

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

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

"**Excluded Assets**" means:

(a) (i) each fee-owned real property with a fair market value of less than $5,000,000 per property, (ii) any real property located outside of the United States of America and (iii) any ground leasehold or other commercial leasehold real property interests or improvements thereto or any interest therein;

(b) motor vehicles and other assets subject to certificates of title statutes (to the extent a lien thereon cannot be perfected solely by filing of a UCC financing statement);

(c) leasehold interests, letters of credit and letters of credit rights not constituting supporting obligations, in each case other than to the extent such interests, rights or obligations can be perfected by the filing of a UCC-1 financing statement or other comparable foreign filing, and commercial tort claims (other than those where no additional action is required by any Guarantor to grant or perfect a security interest in such commercial tort claim);

(d) those pledges and assets over which the granting or perfecting of security interests in such assets would be prohibited by any governmental authority or contract existing on the Closing Date or on the date any Subsidiary party to such contract is acquired (so long as, in the case of an acquisition of a Subsidiary, any such prohibition was not incurred in contemplation of such acquisition), requirement of law (or if any requirement of law creates a material risk of tax or other liability as reasonably determined by the Borrower) or regulation;

(e) equity interests in any Person other than Restricted Subsidiaries to the extent not permitted by the terms of such Person's organizational or joint venture documents or to the extent the pledge thereof would be prohibited by any governmental authority;

(f) any lease, license or other agreement or any property subject to a lease, license or agreement or purchase money agreement, capital lease obligation or similar arrangements to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money agreement or create a right of termination in favor of any other party thereto (other than a Guarantor) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable statute or regulation, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable statute or regulation notwithstanding such prohibition;

(g) any "intent-to-use" trademark or service mark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely 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 any registration that issues from such intent-to-use application under applicable federal law;

(h) those assets that the cost or burden of obtaining or perfecting a security interest therein are excessive in relation to the value of the security to be afforded thereby as reasonably determined by the Borrower and the Administrative Agent;

(i) voting Equity Interests in any Foreign Subsidiaries or FSHCO, in each case in excess of 66% of the total combined voting power of the Equity Interests of such entities entitled to vote and 100% of the Equity Interests of such entities not entitled to vote;

(j) Equity Interests in Unrestricted Subsidiaries, Subsidiaries of Foreign Subsidiaries or FSHCOs; and

(k) Margin Stock; provided that "Excluded Assets" shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets).

"**Excluded Contribution**" means net cash proceeds or marketable securities, in each case received by the Borrower from:

(a) contributions to its common equity capital;

(b) dividends, distributions, fees and other payments from any Unrestricted Subsidiaries or joint ventures or Investments in entities that are not Restricted Subsidiaries; and

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

in each case designated as Excluded Contributions pursuant to an Officer's Certificate on the date such capital contributions are made or the date such Capital Stock is sold, as the case may be.

"**Excluded Subsidiary**" means any (a) Subsidiary that is not a wholly owned Subsidiary, (b) Subsidiary that is prohibited by applicable law from providing a Guarantee, (c) Unrestricted Subsidiary, (d) direct or indirect Domestic Subsidiary of a direct or indirect Foreign Subsidiary, (e) Domestic Subsidiary substantially all of whose assets consist of capital stock (or capital stock and Indebtedness) of one or more Foreign Subsidiaries and any assets incidental thereto, (f) not-for-profit Subsidiary, (g) Subsidiary to the extent providing a Guarantee of the Obligations would result in material adverse tax consequences to the Borrower or any Subsidiary as reasonably determined by the Borrower, (h) Immaterial Subsidiary and (i) any Foreign Subsidiary.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by overall net income (however denominated), franchise Taxes (in lieu of net income Taxes), and branch profits Taxes in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) 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 (ii) that are Other Connection Taxes, (b) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with Section 3.01(e), (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States federal withholding Tax that (i) is required to be imposed on amounts payable to or for the account of such Lender pursuant to the Laws in force at the time such Lender acquires such interest in the Loan or Commitment or (ii) designates a new Lending Office, except that in the case of a Lender that designates a new Lending Office or becomes a party to this Agreement pursuant to an assignment, withholding Taxes shall not be Excluded Taxes to the extent that such Taxes were not Excluded Taxes with respect to such Lender or its assignor, as the case may be, immediately before such designation of a new Lending Office or assignment; and (d) any withholding Taxes imposed under FATCA.

"**Existing Letters of Credit**" means the collective reference to the existing letters of credit identified on Schedule 1.01A, including extensions and renewals thereof.

"**Existing Swap Contracts**" means the collective reference to the existing Swap Contracts identified on Schedule 1.01B, including extensions and renewals thereof.

"**Facility**" means the Revolving Credit Facility, an Incremental Facility or a Refinancing Facility, as the context may require.

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

"**Federal Funds Effective Rate**" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Effective Rate for any day is less than zero, the Federal Funds Effective Rate for such day will be deemed zero.

"**Fiscal Year**" means the fiscal year of the Borrower and its Restricted Subsidiaries ending on December 31 of each calendar year.

"**Fixed Charge Coverage Ratio**" means, with respect to any Person for any period consisting of such Person's most recently ended four fiscal quarters for which internal financial statements are available, the ratio of Consolidated EBITDA of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period. In the event that the Borrower or any Restricted Subsidiary incurs, assumes, guarantees, repays or otherwise retires or extinguishes any Indebtedness or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "***Calculation Date***"), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period and as if the Borrower or Restricted Subsidiary had not earned the interest income actually earned during such period in respect of such cash used to repay, repurchase, defease or otherwise discharge such Indebtedness.

Interest on a Capitalized Lease Obligation shall be deemed to accrue at the interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum of, without duplication, (1) Consolidated Interest Expense of such Person for such period, (2) all cash dividends paid during such period (excluding items eliminated in consolidation) on any series of Preferred Stock of such Person and its Subsidiaries and (3) all cash dividends paid during such period (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person and its Subsidiaries *minus* interest income, non-cash interest expense attributable to movement in mark to market valuation of Hedging Obligations or other derivatives under GAAP, and any expense resulting from the discounting of Indebtedness in connection with the application of purchase accounting in connection with any acquisition.

"**Floor**" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to U.S.D. LIBOR.

"**Foreign Government Scheme or Arrangement**" has the meaning specified in Section 5.11(c).

"**Foreign Lender**" means a Lender that is not a Person.

"**Foreign Plan**" has the meaning specified in Section 5.11(c).

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**FRB**" means the Board of Governors of the Federal Reserve System of the United States.

"**Fronting Exposure**" means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's Applicable Revolving Credit Percentage of the outstanding L/C Obligations in respect of Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"**FSHCO**" means an entity that owns (directly or indirectly) no material assets other than Equity Interests (or Equity Interests and debt interests) of one or more CFCs.

"**Fully Funded**" has the meaning specified in Section 5.11(c)(ii).

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

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time.

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

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

"**Guarantee Agreement**" means the guarantee agreement of even date herewith executed and delivered by the Loan Parties and substantially in the form of Exhibit F-2.

"**Guarantors**" means, collectively, each existing and future direct or indirect Subsidiary of the Borrower (other than any Excluded Subsidiary or any Immaterial Subsidiary). On the Closing Date, the Guarantors will include each Domestic Subsidiary of the Borrower.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes, contaminants, pollutants or any other hazardous or toxic substances, wastes or materials regulated under or defined in any Environmental Law, including petroleum, its derivatives or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

"**Hedge Bank**" means any Person that enters into a Swap Contract permitted hereunder and, as of the Closing Date or at the time it enters into such Swap Contract, is a Lender, the Administrative Agent or an Arranger or an Affiliate of a Lender, the Administrative Agent or an Arranger in its capacity as a party to such Swap Contract.

"**Hedging Obligations**" means any obligations of the Borrower or another Loan Party pursuant to a Swap Contract.

"**Honor Date**" has the meaning specified in Section 2.03(c)(i).

"**Immaterial Subsidiary**" means a Subsidiary of the Borrower for which the Consolidated EBITDA attributable to such Subsidiary accounts for less than or equal to 5% of EBITDA of the Borrower and its Restricted Subsidiaries and collectively with all Immaterial Subsidiaries, less than or equal to 5% of EBITDA of the Borrower and its Restricted Subsidiaries.

"**Increased Amount**" has the meaning specified in Section 7.01(c).

"**Increased Amount Date**" has the meaning specified in Section 2.14(b).

"**Incremental Available Amount**" means

(a) (i) the greater of (x) $50,000,000 and (y) 45% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries *less* (ii) the aggregate principal amount of Indebtedness incurred pursuant to Section 2.14(a) in reliance of this clause (a), *plus*

(b) (i) the amount of any voluntary prepayments or debt buybacks of Term Loans and/or loans under other Indebtedness, in each case, secured on a pari passu basis with the Liens securing the Obligations hereunder (which, in the case of any such Indebtedness that constitutes revolving Indebtedness, is accompanied by a permanent reduction in the relevant commitment), (ii) voluntary prepayments of Revolving Credit Loans to the extent accompanied by a permanent reduction in the relevant commitment, and (iii) the amount paid in cash in respect of any reduction in the outstanding principal amount of any Term Loan resulting from any assignment of such Term Loan to the Borrower pursuant to Section 10.06(b)(vii) and/or the application of "yank-a-bank" provisions pursuant to Section 10.13, in each case, made prior to the Increased Amount Date (in the case of each of clauses (b)(i), (ii) and (iii), other than prepayments, repayments or commitment reductions financed with the proceeds of long-term indebtedness (other than revolving indebtedness (except where revolving indebtedness is used to replace revolving indebtedness))) *less* (iv) the aggregate principal amount of Indebtedness incurred pursuant to Section 2.14(a) in reliance on this clause (b), *plus*

(c) an unlimited amount so long as, after giving effect to the incurrence of such Incremental Facility (assuming all commitments under or in respect of Incremental Term Loans are fully funded and without netting the cash proceeds thereof) in the case of any Incremental Facility secured by any or all of the Collateral on a pari passu basis with the Liens securing the Obligations hereunder, the pro forma Secured Leverage Ratio would not exceed 3.25:1.00,

provided that, at the election of the Borrower, (I) the Borrower shall be deemed to have used amounts under clause (c) (to the extent compliant therewith) prior to utilization of amounts under clause (a) or (b), (II) Loans may be incurred simultaneously under clauses (a), (b) and (c), and proceeds from any such incurrence may be utilized in a single transaction, at the election of the Borrower, by first calculating the incurrence under clause (c) above and then calculating the incurrence under clauses (a) and (b) above and (III) any Loans incurred in reliance on clause (a) and/or (b) may be reclassified, as the Borrower may elect from time to time, as incurred under clause (c) to the extent permitted thereunder at such time on a pro forma basis.

"**Incremental Borrowing**" means a borrowing of Incremental Revolving Loans or Incremental Term Loans, as the context requires.

"**Incremental Facility**" means, at any time, as the context may require, the aggregate amount of the Incremental Revolving Loan Lenders' Incremental Revolving Credit Commitments and/or the Incremental Term Loan Lenders' Incremental Term Loan Commitments of a given Class at such time and, in each case, but without duplication, the Credit Extensions made thereunder.

"**Incremental Revolving Credit Commitments**" has the meaning specified in Section 2.14(a).

"**Incremental Revolving Loan Lender**" has the meaning specified in Section 2.14(b).

"**Incremental Revolving Loan**" has the meaning specified in Section 2.14(e).

"**Incremental Term Loan Commitments**" has the meaning specified in Section 2.14(a).

"**Incremental Term Loan Lender**" has the meaning specified in Section 2.14(b).

"**Incremental Term Loan Maturity Date**" means the date on which Incremental Term Loans of a Class shall become due and payable in full hereunder, as specified in the applicable Joinder Agreement, including by acceleration or otherwise.

"**Incremental Term Loans**" has the meaning specified in Section 2.14(f).

"**Indebtedness**" means, with respect to any Person, without duplication;

(a) any indebtedness (including principal and premium) of such Person: (i) in respect of borrowed money; (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or, without duplication, reimbursement agreements in respect thereof); (iii) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations), except any such balance that constitutes an obligation to a trade creditor accrued in the ordinary course of business; or (iv) all net 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 Hedging Obligations; if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a long-term liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided that Indebtedness of any parent entity appearing on the balance sheet of the Borrower solely by reason of push-down accounting under GAAP shall be excluded;

(b) Disqualified Stock of such Person (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

(c) all guarantees by such Person of the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(d) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset (other than a Lien on Capital Stock of an Unrestricted Subsidiary) owned by such Person (whether or not such Indebtedness is assumed by such Person), provided that the amount of Indebtedness of any Person for purposes of this clause (d) 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;

provided, however, that Indebtedness will not include:

(i) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money, documentary letters of credit issued in connection with inventory purchases in the ordinary course of business and trade payables, accrued expenses and intercompany liabilities in each case arising in the ordinary course of business;

(ii) items that would appear as a liability on a balance sheet prepared in accordance with GAAP as a result of the applicable of EITF 97-10, "The Effect of Lessee Involvement in Asset Construction";

(iii) prepaid or deferred revenue arising in the ordinary course of business;

(iv) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset;

(v) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP;

(vi) intercompany indebtedness;

(vii) the Indebtedness of any partnership in which such Person is a general partner to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

"**Indemnified Liabilities**" has the meaning specified in Section 10.04(b).

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

"**Indemnitee**" has the meaning specified in Section 10.04(b).

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

"**Information**" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a non-confidential basis prior to disclosure by the Borrower or any Subsidiary.

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

"**Interest Period**" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months (or, if approved by the relevant Lenders, 12 months or any period less than one month) thereafter, as selected by the Borrower in its Committed Loan Notice or Conversion/Continuation Notice, as applicable; *provided* that:

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

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

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

"**Interest Rate Determination Date**" means, with respect to any Interest Period in respect of Eurodollar Rate Loans, the date that is two Business Days prior to the first day of such Interest Period.

"**Interpolated Rate**" means, in relation to any Eurodollar Rate Loan, the rate per annum 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 applicable Eurodollar Rate for the longest period (for which the applicable Eurodollar Rate is available for deposits in the applicable currency) that is shorter than the Impacted Interest Period of that Eurodollar Rate Loan and (b) the applicable Eurodollar Rate for the shortest period (for which such Eurodollar Rate is available for deposits in the applicable currency) that exceeds the Impacted Interest Period of that Eurodollar Rate Loan, in each case, as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; *provided* that if the Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"**Investment**" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (including by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others, but excluding accounts receivable, trade credit, advances to customers, commissions, travel and similar advances to employees, directors, consultants and independent contractors), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property.

For purposes of the definition of "Unrestricted Subsidiary" and Section 7.06, (i) "Investments" shall include the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (x) the Borrower's "Investment" in such Subsidiary at the time of such redesignation less (y) the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; (ii) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Borrower; and (iii) any transfer of Capital Stock that results in an entity which became a Restricted Subsidiary after the Closing Date ceasing to be a Restricted Subsidiary shall be deemed to be an Investment in an amount equal to the fair market value (as determined by the Board of Directors of the Borrower in good faith as of the date of initial acquisition) of the Capital Stock of such entity owned by the Borrower and its Restricted Subsidiaries immediately after such transfer.

"**IP Rights**" has the meaning specified in Section 5.16.

"**IRS**" means the United States Internal Revenue Service.

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

"**ISP**" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"**Issuer Documents**" means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement or instrument entered into by the applicable L/C Issuer and the Borrower (or any Restricted Subsidiary) or in favor of such L/C Issuer relating to such Letter of Credit.

"**Joinder Agreement**" means an agreement substantially in the form of Exhibit E.

"**Judgment Currency**" has the meaning specified in Section 10.20.

"**Junior Lien Intercreditor Agreement**" means an intercreditor agreement among the Administrative Agent and the other parties from time to time party thereto, substantially in the form of Exhibit I.

"**L/C Advance**" means, with respect to each Revolving Credit Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

"**L/C Borrowing**" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

"**L/C Credit Extension**" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"**L/C Issuer**" means with respect to Letters of Credit issued hereunder on or after the Closing Date, (i) Barclays Bank PLC, (ii) Fifth Third Bank, National Association, (iii) Regions Bank and (iv) any other Revolving Credit Lender that may become and agrees to become an L/C Issuer pursuant to Section 2.03(l), (v) any successor issuer of Letters of Credit hereunder or (vi) collectively, all of the foregoing, in each case, in their respective capacities as an issuer thereof. Each L/C Issuer's and its respective Affiliates' share of the Letter of Credit Sublimit is set forth opposite such L/C Issuer's name on Schedule 2.01 (as such Schedule may be amended with the consent of each affected L/C Issuer and the Borrower from time to time) under the caption "Letter of Credit Commitments" and no L/C Issuer shall be required to issue Letters of Credit in excess of its applicable amount so set forth; *provided* that it is understood and agreed that each L/C Issuer may, in its sole discretion, make L/C Credit Extensions in an aggregate amount above its respective share of the Letter of Credit Sublimit.

"**L/C Obligations**" means, as at any date of determination, (i) the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* (ii) the aggregate of all Unreimbursed Amounts, including all L/C Borrowings, in each case, using the U.S. Dollar Equivalent of amounts denominated in an Alternative Currency. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"**Latest Maturity Date**" means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Refinancing Term Loan, any Refinancing Term Commitment, any Incremental Term Loans, any Incremental Revolving Credit Commitments or any Other Revolving Commitments, in each case as extended in accordance with this Agreement from time to time.

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

"**Lender**" has the meaning specified in the introductory paragraph hereto.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Letter of Credit**" means any standby letter of credit issued hereunder.

"**Letter of Credit Application**" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

"**Letter of Credit Expiration Date**" means the day that is seven days prior to the Maturity Date then in effect for the applicable Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

"**Letter of Credit Fee**" has the meaning specified in Section 2.03(h).

"**Letter of Credit Sublimit**" means an amount equal to $10,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facilities.

"**LIBO Rate**" has the meaning specified in the definition of Eurodollar Rate.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

"**Loan**" means an extension of credit by a Lender to the Borrower hereunder in the form of a Term Loan or Revolving Credit Loan.

"**Loan Documents**" means this Agreement, each Note, the Guarantee Agreement, the Security Documents, the Pari Passu Intercreditor Agreement, the Agency Fee Letter, each agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement, any Refinancing Amendment, any Joinder Agreement and any other agreement or instrument designated as a "Loan Document" by its terms.

"**Loan Parties**" means, collectively, the Borrower and each Guarantor.

"**Margin Stock**" has the meaning assigned to such term in Regulation U issued by the FRB.

"**Market Capitalization**" means an amount equal to (a) the total number of issued and outstanding shares of voting and non-voting common Equity Interests of the Borrower or any parent entity on the date of the declaration of the applicable Restricted Payment multiplied by (b) the arithmetic mean of the closing price per share of such Equity Interests as reported by The New York Stock Exchange (or, if the primary listing of such Equity Interests is on another exchange, on such other exchange) for each of the 30 consecutive trading days immediately preceding the date of such Restricted Payment.

"**Material Adverse Effect**" means (a) a material adverse change in, or a material adverse effect upon, the results of operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"**Maturity Date**" means, (i) with respect to the Revolving Credit Commitments and any subsequent additions thereto, if any Convertible Senior Notes are outstanding, the date which is 91 days prior to the scheduled redemption date of July 15, 2024 for such Convertible Senior Notes, or, if no such Convertible Senior Notes are outstanding, August 11, 2025, (ii) with respect to any Refinancing Term Loans or Other Revolving Commitments, the final maturity date applicable thereto as specified in the applicable Refinancing Amendment and (iii) with respect to any Incremental Term Loans, the final maturity date applicable thereto as specified in the applicable Joinder Agreement; *provided*, in each case, that if such date is not a Business Day, then the applicable Maturity Date shall be the next preceding Business Day.

"**Maximum Rate**" has the meaning specified in Section 10.09.

"**MNPI**" has the meaning specified in Section 6.02.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

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

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

"**Non-Extension Notice Date**" has the meaning specified in Section 2.03(b)(iii).

"**Note**" means a promissory note made by the Borrower (x) in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit B-1 or (y) in favor of an Incremental Term Loan Lender evidencing Incremental Term Loans made by such Incremental Term Loan Lender, substantially in the form of Exhibit B-2.

"**Obligations**" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Notwithstanding the foregoing, Obligations of any Guarantor shall in no event include any Excluded Swap Obligations (as defined in the Security Agreement) of such Guarantor.

"**OFAC**" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"**Offer Loans**" has the meaning specified in Section 10.06(b)(vii)(A).

"**Officer**" means the chairman of the Board of Directors, the chief executive officer, the president, any executive vice president, senior vice president or vice president, the treasurer or the secretary of the Borrower.

"**Officer's Certificate**" means a certificate signed on behalf of the Borrower, by an Officer of the Borrower.

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

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

"**Other Revolving Commitments**" means one or more Classes of revolving commitments hereunder that result from a Refinancing Amendment.

"**Other Revolving Loans**" means one or more Classes of revolving credit loans made pursuant to Other Revolving Commitments that result from a Refinancing Amendment.

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing, mortgage or mortgage recording Taxes, any other excise or property Taxes, or similar Taxes arising from any payment made hereunder or under any other Loan Document 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, this Agreement or any other Loan Document.

"**Outstanding Amount**" means (a) with respect to Term Loans, Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Credit Loans, as the case may be, occurring on such date and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts, in each case, using the U.S. Dollar Equivalent of amounts denominated in an Alternative Currency.

"**Pari Passu Intercreditor Agreement**" means an intercreditor agreement among the Borrower, the Administrative Agent, the Trustee and the other parties from time to time party thereto, substantially in the form of Exhibit H.

"**Pari Passu Lien Obligations**" means Indebtedness secured by a Lien that is equal in priority to the Liens securing the Obligations (without regard to control of remedies) and is subject to the Intercreditor Agreement (or such other intercreditor agreement having substantially similar terms as the Intercreditor Agreement, taken as a whole), *provided* that (i) the holders of such Indebtedness, or the Pari Passu Lien Representative therefor, executes a joinder agreement to the Security Agreement in the form attached thereto agreeing to be bound thereby and (ii) the Borrower has designated such Indebtedness and related obligations as "Pari Passu Lien Obligations" under the Intercreditor Agreement and provided further than no term loans may be Pari Passu Lien Obligations unless such term loans are incurred under this Agreement.

"**Pari Passu Lien Representative**" means the "Initial Other Representative" as defined in the Pari Passu Intercreditor Agreement.

"**Participant**" has the meaning specified in Section 10.06(d).

"**Participant Register**" has the meaning specified in Section 10.06(d).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Act**" means the Pension Protection Act of 2006.

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

"**Pension Plan**" means any employee pension benefit plan (including, but not limited to, Multiple Employer Plans, Multiemployer Plans, defined benefit plans or defined contribution plans) that is maintained or is contributed to, or during the preceding five plan years has been maintained or contributed to, by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the Pension Funding Rules.

"**Permitted Asset Swap**" means the substantially concurrent purchase and sale or exchange of Permitted Business Assets or a combination of Permitted Business Assets and cash or Cash Equivalents between the Borrower or any of its Restricted Subsidiaries and another Person.

"**Permitted Bond Hedge Transaction**" means one or more call or capped call options (or substantively equivalent derivative transaction) relating to the Borrower's Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower) purchased by the Borrower in connection with the issuance of any Permitted Convertible Notes; *provided, however,* that the purchase price for such Permitted Bond Hedge Transactions, *less* the proceeds received by the Borrower from the sale of any related Permitted Warrant Transactions, does not exceed the net proceeds received by the Borrower from the issuance of such Permitted Convertible Notes in connection with such Permitted Bond Hedge Transactions.

"**Permitted Business**" means any business and any services, activities or businesses incidental, or directly related or similar to any line of business engaged in or proposed to be engaged in by the Borrower and its Restricted Subsidiaries as of the Closing Date and any business or other activity, that is a reasonable extension, development or expansion thereof or ancillary, complementary incidental or related thereto.

"**Permitted Business Assets**" means assets (other than cash or Cash Equivalents) used or useful in a Permitted Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Permitted Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"**Permitted Convertible Indebtedness**" means (a) the Convertible Senior Notes, (b) unsecured Indebtedness of the Borrower or a Subsidiary thereof that (i) as of the date of issuance thereof contains customary conversion or exchange rights and customary offer to repurchase rights for transactions of such type (in each case, as determined by the Borrower in good faith) and (ii) is convertible into or exchangeable for shares of common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower and (c) any guarantee by the Borrower or any Guarantor of Indebtedness of the Borrower or a Subsidiary thereof described in clause (b); *provided* that that such Indebtedness is permitted to be incurred pursuant to Section 7.03.

"**Permitted Debt**" has the meaning specified in Section 7.03(b).

"**Permitted Holder**" means Standard General L.P. and its Affiliates.

"**Permitted Investments**" means

(a) any Investment in the Borrower or any of its Restricted Subsidiaries (including guarantees of obligations of its Restricted Subsidiaries);

(b) any Investment in cash and Cash Equivalents and Investments that were Cash Equivalents when made;

(c) any Investment by the Borrower or any Restricted Subsidiary in a Person if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary and, in each case, any Investment held by such Person as long as not acquired in contemplation of such acquisition;

(d) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with a Disposition made pursuant to Section 7.05 or any other disposition of assets not constituting a Disposition;

(e) any Investment existing or made pursuant to binding commitments in effect on the Closing Date and any modification, increase, replacement, refinancing, refund, reinvestment, renewal or extension thereof, but only to the extent not involving additional advances unless required by the terms of the Investments as in effect on the Closing Date or otherwise permitted hereunder, contributions or other Investments of cash or other assets or other increases thereof other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities;

(f) loans and advances to officers, directors, employees and consultants and any guarantees not in excess of the greater of $10,000,000 and 10% of Consolidated EBITDA in the aggregate principal amount outstanding at any one time;

(g) any Investment acquired by the Borrower or any Restricted Subsidiary (A) in exchange for any other Investment, accounts receivable, security deposit or prepayment held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, (B) as a result of a foreclosure by the Borrower or Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (C) in satisfaction of judgements against another Person;

(h) Hedging Obligations permitted under Section 7.03(b)(ix);

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

(j) any Investment by the Borrower or a Restricted Subsidiary having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (j) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash and/or marketable securities), not to exceed an amount equal to the greater of $35,000,000 and 35% of Consolidated EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided, however*, that if such Investment is in Capital Stock of a Person that subsequently becomes a Restricted Subsidiary, such Investment shall thereafter be deemed permitted under clause (a) above and shall not be included as having been made pursuant to this clause (j);

(k) Investments the payment for which consists of Equity Interests of the Borrower or any of its direct or indirect parent entities (exclusive of Disqualified Stock) or Unrestricted Subsidiaries; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under Section 7.06(c);

(l) guarantees (including Guarantees) of (a) Indebtedness permitted under Section 7.03 or (b) operating leases (excluding Capitalized Lease Obligations) and performance guarantees consistent with past practice;

(m) Investments consisting of leasing or licensing of intellectual property pursuant to joint marketing arrangements with other Persons;

(n) any Investment (i) in a similar business or joint ventures having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (n) that are at that time outstanding, not to exceed the greater of $50,000,000 and 50% of Consolidated EBITDA at the time of such Investment (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value) and (ii) without duplication with clause (a), in an amount equal to the net cash proceeds from any sale or disposition of, or any distribution in respect of, Investments acquired after the Closing Date, to the extent the acquisition of such Investments was financed in reliance on clause (i), *provided, however*, that if any Investment pursuant to this clause (n) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (n);

(o) Investments consisting of earnest money deposits required in connection with a purchase agreement or other acquisition otherwise permitted under Section 7.06;

(p) Investments made as part of the Transactions;

(q) Investments resulting from pledges and deposits that are Permitted Liens;

(r) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(s) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower;

(t) purchases or acquisitions of inventory, supplies, materials and equipment or purchases, acquisitions or licenses of contract rights, intellectual property or other assets or services in each case in the ordinary course of business;

(u) any Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment or other similar assets, or the licensing or contribution of intellectual property pursuant to joint development, joint venture or marketing arrangements with other Persons;

(v) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower;

(w) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of the second paragraph of the covenant described under Section 7.08;

(x) any other investment, so long as, after giving pro forma effect to such Investment, the Secured Leverage Ratio shall be no greater than 2.75:1.00;

(y) Investments in any Indebtedness of the Borrower or the Restricted Subsidiary;

(z) Investments in the ordinary course of business or consistent with past practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(aa) Investments in Unrestricted Subsidiaries (i) having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (aa) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities, not to exceed the greater of $10,000,000 and 10% of Consolidated EBITDA at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value) and (ii) without duplication with clause (i), in an amount equal to the net cash proceeds from any sale or disposition of, or any distribution in respect of, Investments acquired after the Closing Date, to the extent the acquisition of such Investments was financed in reliance on clause (i), *provided, however*, that if any Investment pursuant to this clause (aa) is made in any Person that is an Unrestricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (aa);

(bb) deposits in the TMSA Account and the investment of any moneys in such account; and

(cc) to the extent constituting Investments, the issuance of, entry into (including any payments of premiums in connection therewith), and performance of obligations under Permitted Convertible Indebtedness, Permitted Bond Hedge Transactions and Permitted Warrant Transactions.

"**Permitted Liens**" means the following types of Liens:

(a) Liens existing on the Closing Date (other than Liens securing the 2026 Senior Secured Notes and Liens securing the Obligations);

(b) Liens securing (i) Indebtedness permitted to be incurred pursuant to clause (b)(xi), (b)(xiii), (b)(xiv)(C), (b)(xvii), (b)(xxii), and (b)(xxxii) of the definition of "Permitted Debt" and *provided* that Liens securing obligations permitted to be incurred pursuant to clause (b)(xiii) of the definition of "Permitted Debt" relate only to obligations in respect of Refinancing Indebtedness that (x) is secured by Liens on the same assets as the assets that secured the Indebtedness being refinanced or (y) extends, replaces, refunds, refinances, renews or defeases Indebtedness solely to the extent such Indebtedness was secured by a Lien prior to such refinancing and (ii) Indebtedness consisting of Pari Passu Lien Obligations that, at the time of incurrence, does not exceed the maximum principal amount of Indebtedness that, as of such date and after giving pro forma effect to the incurrence of such Indebtedness and the application of the proceeds therefrom on such date, would not cause the Secured Leverage Ratio of the Borrower to exceed 3.25:1.00 and any Refinancing Indebtedness in respect thereof with Pari Passu Lien Obligations permitted by clause (b)(xiii) of the definition of "Permitted Debt";

(c) (i) Liens securing the Obligations and (ii) Liens securing the 2026 Senior Secured Notes and the related Guarantees;

(d) deposits of cash or government bonds made in the ordinary course of business to secure surety or appeal bonds to which such Person is a party;

(e) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptance issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice;

(f) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized in connection with, such other Person becoming such a Subsidiary; *provided, further, however*, that such Liens may not extend to any other property owned by the Borrower or any of its Restricted Subsidiary (other than assets and property affixed or appurtenant thereto and the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition);

(g) Liens on property or Capital Stock at the time the Borrower or a Restricted Subsidiary acquired the property or Capital Stock, including any acquisition by means of a merger or consolidation with or into the Borrower or any of its Restricted Subsidiaries; *provided, however*, that (A) such Liens are not created or incurred in connection with, or in contemplation of, or to provide all or any portion of the funds or credit support utilized for, such acquisition and (B) such Liens may not extend to any other property owned by the Borrower or any Restricted Subsidiary, *provided, further, however*, that the foregoing limitation shall not apply to Indebtedness of any Person that becomes a Restricted Subsidiary in connection with an acquisition or any other Investment not prohibited by Section 7.06 (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary) if such Indebtedness is outstanding prior to such Person becoming a Restricted Subsidiary and to the extent such Indebtedness is not incurred in contemplation of such acquisition or Investment;

(h) Liens securing Hedging Obligations (and the costs thereof);

(i) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person or other similar instruments in order to facilitate the purchase, shipment or storage of such inventory or other goods;

(j) Liens on the properties or assets of the Borrower or any Restricted Subsidiary in favor of the Borrower or any Restricted Subsidiary, the Trustee or the Collateral Agent;

(k) Liens to secure any modification, refinancing, refunding, restatement, exchange, extension, renewal or replacement (or successive refinancing, refunding, restatement, exchange, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness that is secured by a Lien existing on the Closing Date or referred to in clauses (f), (g), (q), (s), (t), (u) and (dd) of this definition; *provided, however*, that such Liens (x) are no less favorable to the Lenders taken as a whole, and are not more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being refinanced; and (y) do not extend to or cover any property or assets of the Borrower or any of its Restricted Subsidiaries not securing the Indebtedness so refinanced;

(l) [reserved];

(m) Liens for taxes, assessments or other governmental charges or levies not yet delinquent or which are being contested in good faith by appropriate proceedings and with respect to which appropriate reserves have been taken in accordance with GAAP or for property taxes on property that the Borrower or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property;

(n) judgment liens in respect of judgments that do not constitute an Event of Default and notices of *lis pendens* and associated rights so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(o) pledges, deposits or security under workmen's compensation, unemployment insurance, employers health tax, and other social security laws or regulations or other insurance related obligations, or deposits to secure the performance of tenders, contracts (other than for the payment of Indebtedness) or leases, or deposits to secure public or statutory obligations, or deposits as security for contested taxes (to the extent such taxes are diligently contested in good faith by appropriate proceedings) or import or customs duties or for the payment of rent, or deposits or other security securing liabilities to insurance carriers under insurance or self- insurance arrangements or earnest money deposits required in connection a purchase agreement or other acquisition, in each case incurred in the ordinary course of business or consistent with past practice;

(p) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable law, (i) arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the Borrower or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(q) survey exceptions and such matters as an accurate survey would disclose, special assessments, covenants, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of business or to the ownership of properties that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business, and any extension, renewal or replacement of any such Liens;

(r) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower or any of its Restricted Subsidiaries or the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(s) banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution;

(t) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases or consignments entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business;

(u) (A) other Liens securing Indebtedness for borrowed money or other obligations with respect to property or assets with an aggregate fair market value (valued at the time of creation thereof) that does not exceed the greater of $30,000,000 and 30% of Consolidated EBITDA and (B) Liens securing Indebtedness incurred pursuant to Section 7.03(b)(iv); *provided, however*, that with respect to Capitalized Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to such assets) other than the assets subject to such Capitalized Lease Obligations; *provided* that individual financings of property provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to pooling, commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(w) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(x) 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 Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;

(y) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or agreement permitted hereunder;

(z) Liens to secure Indebtedness incurred pursuant to Section 7.03(b)(xix) and (xx) of the definition of "Permitted Debt";

(aa) Liens to secure Indebtedness incurred pursuant to Section 7.03(b)(xxi);

(bb) Liens arising by operation of law under Article 2 of the Uniform Commercial Code in favor of a reclaiming seller of goods or buyer of goods and Liens arising from Uniform Commercial Code financing statements, including precautionary financing statements, or any similar filings made in respect of operating leases or consignments entered into by the Borrower or any of its Restricted Subsidiaries;

(cc) security given to a public or private utility or any governmental authority as required in the ordinary course of business or consistent with past practice;

(dd) landlords', lessors' and sublessors' Liens in respect of rent not in default for more than 60 days or the existence of which, individually or in the aggregate, would not, in the good faith judgment of the Borrower, materially adversely affect the Borrower's business or its ability to pay any Obligation;

(ee) Liens in favor of customs and revenues authorities imposed by applicable law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than 60 days or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the Borrower or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(ff) Liens on securities which are the subject of repurchase agreements incurred in the ordinary course of business;

(gg) Liens on the Capital Stock of Unrestricted Subsidiaries or joint ventures;

(hh) Liens securing Indebtedness incurred pursuant to Sections 7.03(b)(v), 7.03(b)(xvi) and 7.03(b)(xxxii);

(ii) Liens arising from precautionary Uniform Commercial Code financing statements;

(jj) Liens on Capital Stock of any joint venture pursuant to the relevant joint venture agreement or arrangement;

(kk) Liens on vehicles or equipment of Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;

(ll) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited herein;

(mm) [reserved];

(nn) Liens securing any COVID-19 Relief Funds;

(oo) Liens on Collateral ranking junior in priority to the Liens securing the Obligations; *provided* that after giving effect to such Liens, the Fixed Charge Coverage Ratio would be at least 2.00:1.00 and provided further that such Liens are subject to the Junior Lien Intercreditor Agreement;

(pp) other Liens securing Indebtedness (including Capitalized Lease Obligations) in an aggregate principal amount not to exceed the greater of (x) $25,000,000 and (y) 25% of Consolidated EBITDA; and

(qq) Liens relating to future escrow arrangements securing Indebtedness, including (i) Liens on escrowed proceeds from the issuance of Indebtedness for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, arrangers, trustee or collateral agent thereof) and (ii) Liens on cash or Cash Equivalents set aside at the time of the incurrence of any Indebtedness, in either case to the extent such cash or Cash Equivalents prefund the payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance of such Indebtedness) and are held in an escrow account or similar arrangement to be applied for such purpose.

For purposes of determining compliance with this definition, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but are permitted to be incurred in part under any combination thereof and of any other available exemption, (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, Borrower shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (C) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (b)(ii) above (giving pro forma effect to the incurrence of such portion of such Indebtedness), the Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (b)(ii) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition and (D) at the time of incurrence, the Borrower will be entitled to divide and classify an item of Secured Indebtedness in more than one of clauses (a) through (qq) of this definition of Permitted Lien without giving pro forma effect to the Indebtedness incurred pursuant to clauses (a) through (qq), other than clause (b)(ii) of the definition of Permitted Lien when calculating the amount of Indebtedness that may be incurred pursuant to clause (b)(ii) of this definition).

"**Permitted Warrant Transaction**" means one or more call options, warrants or rights to purchase (or substantively equivalent derivative transaction) relating to the Borrower's Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower) sold by the Borrower substantially concurrently in connection with any purchase by the Borrower of a related Permitted Bond Hedge Transaction.

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

"**Platform**" has the meaning specified in Section 6.02.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends upon liquidation, dissolution or winding up.

"**Prepayment Notice**" means a notice of the optional prepayment of Revolving Credit Loans or Term Loans pursuant to Section 2.05(a), which shall be substantially in the form of Exhibit A-3.

"**Prime Rate**" means the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States 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 reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent).

"**Pro Rata Obligations**" means the Loans and the Letters of Credit.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Lender**" has the meaning specified in Section 6.02.

"**Quarterly Financial Statements**" has the meaning specified in Section 6.01(b).

"**Recipient**" means the Administrative Agent, any Lender or any L/C Issuer, as applicable.

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

"**Refinanced Debt**" has the meaning specified in the definition of "Credit Agreement Refinancing Indebtedness".

"**Refinancing Amendment**" means an amendment, supplement, or joinder to this Agreement executed by the Borrower, the Administrative Agent, each Additional Refinancing Lender and each Lender that agrees to provide any portion of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans, in each case in accordance with Section 2.17.

"**Refinancing Facility**" means, at any time, as the context may require, the aggregate amount of Refinancing Term Commitments and/or Other Revolving Commitments of a given Refinancing Series at such time and, in each case, but without duplication, the Credit Extensions made thereunder.

"**Refinancing Indebtedness**" has the meaning specified in Section 7.03(b)(xiii).

"**Refinancing Series**" means all Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Commitments or Other Revolving Loans that are established pursuant to the same Refinancing Amendment (or any subsequent Refinancing Amendment to the extent such Refinancing Amendment expressly provides that the Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Commitments or Other Revolving Loans provided for therein are intended to be a part of any previously established Refinancing Series) and that provide for the same effective yield and, in the case of Refinancing Term Loans or Refinancing Term Commitments, amortization schedule.

"**Refinancing Term Commitments**" means one or more Classes of Term Commitments that are established to fund Refinancing Term Loans hereunder pursuant to a Refinancing Amendment.

"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.

"**Register**" has the meaning specified in Section 10.06(c).

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping or leaching of any Hazardous Material into the environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

"**Relevant Governmental Body**" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"**Replacement Assets**" means (1) substantially all the assets of a Person primarily engaged in a Permitted Business, or (2) a majority of the Voting Stock of any Person primarily engaged in a Permitted Business that will become, on the date of acquisition thereof, a Restricted Subsidiary.

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

"**Request for Credit Extension**" means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice or Conversion/Continuation Notice, as applicable, and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

"**Required Facility Lenders**" means, as of any date of determination, with respect to any Facility, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations under such Facility being deemed "held" by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders.

"**Required Lenders**" means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"**Required Revolving Credit Lenders**" means, as of any date of determination, Revolving Credit Lenders holding more than 50.00% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; *provided* that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

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

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

"**Restricted Payment**" as defined in Section 7.06.

"**Restricted Subsidiary**" means any Subsidiary other than an Unrestricted Subsidiary.

"**Revolving Credit Borrowing**" means a borrowing consisting of one or more simultaneous Revolving Credit Loans of the same Class and Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made pursuant to Section 2.01.

"**Revolving Credit Commitment**" means, with respect to each Revolving Credit Lender, (i) the commitment, if any, of such Revolving Credit Lender to make Revolving Credit Loans hereunder up to the amount set forth on Schedule 2.01 or on Schedule 1 to the Assignment and Assumption pursuant to which such Revolving Credit Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) increased from time to time pursuant to Section 2.14, (b) reduced from time to time pursuant to Section 2.05 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.06, and (ii) any Incremental Revolving Credit Commitments and Other Revolving Commitments of such Revolving Credit Lender, if applicable. The aggregate principal amount of the Lenders' Revolving Credit Commitments on the Closing Date is $25,000,000.

"**Revolving Credit Facility**" means the collective reference to the Revolving Credit Commitments and any additional revolving credit facilities resulting from Incremental Revolving Credit Commitments and Other Revolving Commitments and the Credit Extensions made thereunder, or, as the context may require, to any of such revolving credit facilities individually.

"**Revolving Credit Lender**" means, at any time, any Lender that has a Revolving Credit Commitment at such time or that has Revolving Credit Loans or risk participations in L/C Obligations outstanding at such time.

"**Revolving Credit Loan**" has the meaning specified in Section 2.01(a) and shall include, as the context may require, any Incremental Revolving Loans or Other Revolving Loans.

"**Sanctions**" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, or Her Majesty's Treasury of the United Kingdom.

"**Sanctioned Country**" means a country, territory or a government of a country or territory that is subject to Sanctions.

"**Sanctioned Person**" means (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, or Her Majesty's Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b)."**S&P**" means S&P Global Inc., through its S&P Global Ratings division or any successor thereto.

"**Same Day Funds**" means (a) with respect to disbursements and payments in U.S. Dollars, immediately available funds and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be reasonably determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlements of international banking transactions in the relevant Alternative Currency.

"**Screen Rate**" means, (i) in relation to a Loan denominated in U.S. Dollars, the London Interbank Offered Rate administered by the ICE Benchmark Association Limited (or any other Person that takes over the administration of such rate) for the relevant currency and Interest Period and (ii) in relation to a Loan denominated in Euros, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, in each case, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Administrative Agent may specify another page or service displaying the appropriate rate.

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

"**Secured Cash Management Agreement**" means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

"**Secured Hedge Agreement**" means the Existing Swap Contracts and any interest rate, currency or commodity Swap Contract permitted under this Agreement that is entered into by and between a Loan Party and any Hedge Bank other than any obligation of any Guarantor 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 (a "**Swap**"), if, and to the extent that, all or a portion of the guarantee by such Guarantor of such Swap (or any guarantee thereof) (determined after giving effect to any applicable keepwell, support, or other agreement for the benefit of such Guarantor and any and all applicable guarantees of such Guarantor's Swap obligations by other Loan Parties) 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).

"**Secured Indebtedness**" means any Indebtedness of the Borrower or a Restricted Subsidiary secured by a Lien.

"**Secured Leverage Ratio**" means, the ratio of (i) Secured Indebtedness secured by a first priority Lien on any Collateral minus the aggregate amount of unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries computed as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date (determined on a consolidated basis in accordance with GAAP) to (ii) EBITDA of the Borrower and its Restricted Subsidiaries for the four full fiscal quarters for which internal financial statements prepared in accordance with GAAP are available immediately preceding such date on which such additional Indebtedness is incurred.

"**Secured Parties**" means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, with respect to any Secured Cash Management Agreement, the Cash Management Banks, with respect to any Secured Hedge Agreement, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Documents.

"**Security Agreement**" means the Security agreement of even date herewith executed and delivered by the Loan Parties and substantially in the form of Exhibit F-1.

"**Security Documents**" means, collectively, the Security Agreement, collateral assignments, supplements to all of the foregoing, security agreements, pledge agreements, control agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(ii) or 6.11, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"**Shareholders' Equity**" means, as of any date of determination, consolidated shareholders', partners' or members' equity of the Borrower and its Restricted Subsidiaries as of that date determined in accordance with GAAP.

"**SOFR**" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Specified Intellectual Property**" means the Borrower's intellectual property rights in the brands Zig-Zag® and Stoker's®, including any trademarks, trade dress and copyrights solely relating thereto.

"**Specified Subsidiaries**" means Standard Merger Sub LLC, Vaporfi Franchising, LLC and Vapor Shark Franchising, LLC.

"**Specified Transaction**" means, with respect to any period, any Investment, sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, or other event that by the terms hereunder requires such covenant to be calculated on a pro forma basis after giving pro forma effect thereto.

"**Spot Rate**" for a currency means the rate determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that the Administrative Agent or the applicable L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the applicable L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; *provided further*, that the applicable L/C Issuer may use such spot rate quoted on the date as of which any foreign exchange computation is to be made in the case of any Letter of Credit denominated in an Alternative Currency.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" (as such term is defined in Regulation D of the FRB)). Such reserve percentages shall include those imposed pursuant to such Regulation D. Without limiting the effect of the foregoing, the Statutory Reserve Rate shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Eurodollar Rate or any other interest rate of a Loan is to be determined or (b) any category of extensions of credit or other assets which include Eurodollar Rate Loans, Eurodollar Rate 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 such 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.

"**Subject Lien**" has the meaning specified in Section 7.01(a).

"**Subordinated Indebtedness**" means (1) with respect to the Borrower, any Indebtedness of the Borrower that is by its terms subordinated in right of payment to the Obligations and (2) with respect to any Guarantor, any Indebtedness of such Guarantor that is by its terms subordinated in right of payment to its Guarantee.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "**Subsidiary**" or to "**Subsidiaries**" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"**Swap Contract**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other similar master agreement relating to a transaction described in clause (a) (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"**Swap Termination Value**" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

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

"**Term Borrowing**" means a borrowing consisting of simultaneous Term Loans of the same Class and Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the applicable Term Lenders.

"**Term Commitment**" means, as to each Term Lender, if the context so requires, its commitment to make other Term Loans pursuant to a Joinder Agreement or a Refinancing Amendment, as applicable.

"**Term Lender**" means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

"**Term Loan**" means an Incremental Term Loan or Refinancing Term Loan, individually or collectively as the context may require.

"**Term SOFR**" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Threshold Amount**" means $40,000,000.

"**TMSA Account**" means that escrow account of the Borrower the balance of which consists exclusively of (and is established as an account solely for the purposes of holding), amounts required to comply with the Master Settlement Agreement entered into on November 23, 1998, by and among the respective officials of each Settling State (as defined therein), Brown & Williamson Tobacco Corporation, Lorillard Tobacco Borrower, Philip Morris Incorporated, R.J. Reynolds Tobacco Borrower, Liggett Group Inc., and Commonwealth Brands, Inc..

"**Total Outstandings**" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"**Total Revolving Credit Outstandings**" means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

"**Trade Date**" has the meaning specified in Section 10.06(h).

"**Transaction Election**" has the meaning specified in Section 1.09(c).

"**Transaction Test Date**" has the meaning specified in Section 1.09(c).

"**Transactions**" means, collectively, (a) the entering into by the Borrower and the other Loan Parties of the Loan Documents to which they are or are intended to be a party, (b) any initial Credit Extensions on the Closing Date, (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing, (d) the issuance of the 2026 Senior Secured Notes and (e) the payoff in full of all loans under and termination of the Existing Credit Agreement.

"**Trustee**" means the trustee under the 2026 Senior Secured Notes Indenture.

"**Type**" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" **means** the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**United States**" and "**U.S.**" mean the United States of America.

"**Unreimbursed Amount**" has the meaning specified in Section 2.03(c)(i).

"**Unrestricted Subsidiary**" means any Subsidiary (1) of the Borrower that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Borrower pursuant to Section 6.15) and (2) of an Unrestricted Subsidiary.

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

"**U.S. Dollar Equivalent**" means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in U.S. Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Valuation Date) for the purchase of U.S. Dollars with such Alternative Currency.

"**U.S.D. LIBOR**" means the London interbank offered rate for U.S. Dollars.

"**U.S. Tax Compliance Certificate**" means a certificate substantially in the form of any of Exhibits G1 through G4, as the context requires.

"**Valuation Date**" means (i) the date two Business Days prior to the making, continuing or converting of any Revolving Credit Loan or the date of issuance, amendment or continuation of any Letter of Credit, (ii) the first Business Day of each calendar month, (iii) any other date reasonably designated by the Administrative Agent or an L/C Issuer in order to reasonably assure a correct exchange rate or (iv) any date that is as otherwise expressly provided for herein.

"**Voting Stock**" means, with respect to any Person, the Equity Interests of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended (the "**Applicable Indebtedness**"), the effect of any prepayments made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

"**Withholding Agent**" means any Loan Party and the Administrative Agent.

"**Write-Down and Conversion Powers**" means (a) with respect to any EEA Resolution Authority, the write down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 *Other Interpretive Provisions*. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 *Accounting Terms*. (a) *Generally*. Subject to Section 1.03(b), all accounting terms not specifically or completely defined herein shall be construed in conformity with GAAP, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time.

(a) *Changes in GAAP*. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

(b) *Indebtedness.* Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to 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.

Section 1.04 *Rounding*. Any financial ratios required to be maintained or complied with by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 *Times of Day*. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 *Letter of Credit Amounts*. With respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.07 *Currency Equivalents Generally; Change of Currency*. For purposes of this Agreement and the other Loan Documents (other than Article 2, Article 9 and Article 10 hereof), except as expressly set forth herein, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in U.S. Dollars, such amounts shall be deemed to refer to U.S. Dollars and any requisite currency translation shall be based on the Spot Rate in effect on the Business Day of such transaction or determination. Notwithstanding the foregoing, for purposes of determining compliance with Sections 7.01, 7.03, and 7.06 with respect to any amount of Liens, Indebtedness or Restricted Payments in currencies other than U.S. Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Lien is created, Indebtedness is incurred or Restricted Payment is made. Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent (not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

Section 1.08 *Timing of Payment and 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 (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.09 *Certain Calculations*.

(a) All pro forma calculations permitted or required to be made by the Borrower or any Restricted Subsidiary pursuant to this Agreement shall include only those adjustments that have been certified by an Officer of the Borrower as having been prepared in good faith based upon reasonably detailed written assumptions believed by the Borrower at the time of preparation to be reasonable and which are reasonably foreseeable. Any ratio calculated hereunder that includes Consolidated EBITDA shall look to Consolidated EBITDA for the most recently completed Applicable Measurement Period.

(b) The pro forma Secured Leverage Ratio, Consolidated Leverage Ratio and Fixed Charge Coverage Ratio shall be calculated as follows:

(i) in the event that the Borrower or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness subsequent to the last day of the Applicable Measurement Period for which such pro forma ratio is being calculated but on or prior to the date of the event for which the calculation of such pro forma ratio is being made (a "**Ratio Calculation Date**"), then such pro forma ratio shall be calculated as if such incurrence, assumption, guarantee, redemption, retirement or extinguishment of Indebtedness (and all other incurrences, assumptions, guarantees, redemptions, retirements or extinguishments of Indebtedness consummated since the last day of the Applicable Measurement Period but on or prior to the Ratio Calculation Date) had occurred at the last day of the Applicable Measurement Period; *provided* that (i) in the case of any incurrence of Indebtedness or establishment of any revolving credit or delayed draw commitments, (x) a borrowing of the maximum amount of Indebtedness available under such revolving credit or delayed draw commitments shall be assumed and (y) the cash proceeds of such incurred Indebtedness shall be excluded from amounts that may be netted in the calculation of the pro forma Secured Leverage Ratio or the pro forma Consolidated Leverage Ratio, as applicable and (ii) the pro forma Consolidated Interest Expense for the Applicable Measurement Period shall be calculated assuming such Indebtedness had been outstanding or repaid, as the case may be, since the first day and through the end of the Applicable Measurement Period;

(ii) in the event that any permitted Investments in the nature of an acquisition are made subsequent to the last day of the Applicable Measurement Period for which such pro forma ratio is being calculated but on or prior to the Ratio Calculation Date, then Consolidated EBITDA shall be (x) increased by an amount equal to the Consolidated EBITDA attributable to the property or Investment that is the subject of such permitted Investment in the nature of an acquisition, in each case assuming such permitted Investment in the nature of an acquisition had been made on the first day of the Applicable Measurement Period and (y) otherwise calculated as set forth in the third paragraph of the definition of "Consolidated EBITDA" on a pro forma basis;

(iii) in the event that Dispositions are made subsequent to the last day of the Applicable Measurement Period for which such pro forma ratio is being calculated but on or prior to the relevant Ratio Calculation Date, then Consolidated EBITDA shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Disposition or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto, in each case assuming such Disposition had been made on the first day of the Applicable Measurement Period;

(iv) For purposes of such definitions of Secured Leverage Ratio, Consolidated Leverage Ratio and Fixed Charge Coverage Ratio (and any component definitions), whenever pro forma effect is to be given to an Investment, acquisition, disposition, merger or consolidation and the amount of income or earnings relating thereto, the pro forma calculations shall be determined in good faith by a responsible financial or accounting Officer of the Borrower and may include operating expense reductions, cost savings, and synergies for such period resulting from the transaction which is being given pro forma effect (A) that have been realized, (B) for which the steps necessary for realization have been taken (or are taken concurrently with such transaction) or (C) for which the steps necessary for realization are reasonably expected to be taken within the twelve-month period following such transaction and, in each case, including, but not limited to, (a) reduction in personnel expenses, (b) reduction of costs related to administrative functions, (c) reduction of costs related to leased or owned properties and (d) reductions from the consolidation of operations and streamlining of corporate overhead; *provided*, that, in each case, such adjustments are based on the reasonable good faith beliefs of the Officers executing such Officer's Certificate at the time of such execution. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if the related hedge has a remaining term in excess of twelve months); and

(v) Without regard to the incurrence of any Indebtedness under any Revolving Credit Facility or Letters of Credit immediately prior to or in connection therewith; *provided* that for the avoidance of doubt, the amount of any cash proceeds from such Revolving Credit Facility or Letter of Credit shall also be disregarded for purposes of such calculation.

For the avoidance of doubt, the cash used in connection with any transaction specified above shall be excluded from amounts that may be netted in the calculation of pro forma Secured Leverage Ratio or the pro forma Consolidated Leverage Ratio, as applicable.

(c) Notwithstanding anything to the contrary herein, when (i) calculating the availability under any basket, ratio or other financial test hereunder, (ii) determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or (iii) determining compliance with any other condition precedent to any action or transaction, and any actions or transactions related thereto (including acquisitions, Dispositions, Investments, the incurrence or issuance of Indebtedness (including executing commitments therefor), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments), the date of determination of such basket, ratio or other financial test, whether any Default or Event of Default has occurred, is continuing or would result therefrom, or the satisfaction of any other condition precedent, shall, at the option of the Borrower (the Borrower's election to exercise such option a "**Transaction Election**"), be deemed to be the date that the definitive agreement (or also, in the case of the incurrence of Indebtedness, the date binding commitment letters therefor) is entered into (or, if applicable, the date of delivery of an irrevocable notice or similar event) (any such date, the "**Transaction Test Date**") and such baskets, ratios or other financial tests, absence of defaults, satisfaction of conditions precedent and other provisions shall be calculated on a pro forma basis after giving effect to such transactions to be entered into in connection therewith (including acquisitions, Dispositions, Investments, the incurrence or issuance of Indebtedness (including executing commitments therefor), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) as if they occurred at the beginning of the applicable period for the Transaction Test Date for purposes of determining the ability to consummate any such transaction (and not for purposes of any subsequent availability of any basket or ratio), and, for the avoidance of doubt, (x) if any of such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions precedent or other provisions are exceeded, breached or otherwise failed as a result of fluctuations in such basket or ratio (including due to fluctuations in Consolidated EBITDA, Consolidated Total Debt, Consolidated Net Income, Consolidated Total Assets or other similar financial metric of the Borrower or the target company) subsequent to such date of determination and at or prior to the consummation of the relevant transaction, such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions precedent and other provisions will not be deemed to have been exceeded, breached or otherwise failed as a result of such fluctuations solely for purposes of determining whether the transaction and related transactions (including acquisitions, Dispositions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) are permitted hereunder and (y) such baskets or ratios, absence of Default or Event of Default, satisfaction of conditions and other provisions shall not be tested at the time of consummation of the transaction or related transactions solely for the purpose of determining whether such transaction is permitted hereunder; *provided, further*, that if the Borrower has made a Transaction Election for any transaction, then, in connection with any subsequent calculation of any ratio or basket availability with respect to any other transaction or otherwise on or following the relevant Transaction Test Date and prior to the consummation of such transaction, unless and until such transaction has been abandoned (or revoked via an Officer's Certificate) or such definitive agreement has expired or been terminated prior to consummation thereof, any such ratio or basket shall be calculated on a pro forma basis assuming such transaction and other transactions in connection therewith (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens and Restricted Payments) have been consummated.

(d) For purposes of calculating any "net" ratio test utilized in any debt incurrence test (including any amounts permitted to be incurred pursuant to Section 2.14), such ratio shall be calculated after giving effect to any such incurrence on a pro forma basis, and, in each case, with respect to any revolving credit or delayed draw commitments being established utilizing a debt incurrence test (including any Incremental Revolving Credit Commitment), assuming a borrowing of the maximum amount of such revolving credit or delayed draw commitment (but for the avoidance of doubt, no other previously established revolving commitment), and such calculation shall be made excluding the cash proceeds from such incurrence from the amount of cash and Cash Equivalents that may be netted in the calculation of pro forma Secured Leverage Ratio or Consolidated Leverage Ratio, as applicable.

Section 1.10 *Rates*. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto.

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 on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.12 *Interest Rate; LIBOR Notification*. The interest rate on LIBO Rate Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The interest rate on a Loan denominated in U.S. Dollars or any Alternative Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable Laws, may be permanently discontinued, and/or the basis on which they are calculated may change. 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 LIBO Rate 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. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 3.08, such Section 3.08 provides a mechanism for determining the SOFR. The Administrative Agent will notify the Borrower, pursuant to Section 3.08, in advance of any change to the reference rate upon which the interest rate on LIBO Rate Loans is based. Upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, Section 3.08 provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 3.08, of any change to the reference rate upon which the interest rate on LIBO Rate 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, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.08, whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.08), 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.

ARTICLE 2.
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 *The Revolving Credit Borrowings*.

(a) Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a "**Revolving Credit Loan**") to the Borrower in U.S. Dollars, from time to time, on any Business Day during the applicable Availability Period for the Revolving Credit Facility under which such Revolving Credit Lender has a Revolving Credit Commitment, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Credit Lender's Revolving Credit Commitment; *provided, however,* that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans as further provided herein.

Section 2.02 *Borrowings, Conversions and Continuations of Loans*.

(a) Each Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by "pdf" or similar electronic format, in the form of a Committed Loan Notice or a Conversion/Continuation Notice, as applicable (each, a "**Notice**"). Each such Notice must be received by the Administrative Agent not later than (i) 11:00 a.m. three Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Rate Loans or of any conversion of or conversion to Eurodollar Rate Loans and (ii) 11:00 a.m. on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a minimum principal amount of $5,000,000 and whole multiples of $1,000,000 in excess thereof. Except as provided in Section 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Each Notice shall specify, as applicable, (1) whether the Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, and in each case, the Class of the relevant Loans and Borrowings, (2) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (3) the principal amount of Loans to be borrowed, converted or continued, (4) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, (5) if applicable, the duration of the applicable Interest Period with respect thereto and (6) in the case of Revolving Credit Borrowings or Revolving Credit Loans, the currency of the Loans to be borrowed, continued or converted (*provided*, that if the Borrower shall fail to so specify, the applicable Revolving Credit Borrowing shall be denominated in U.S. Dollars). With respect to Loans denominated in U.S. Dollars, if the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice or Conversion/Continuation Notice, as applicable, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If the Borrower fails to give a timely notice requesting a continuation of Eurodollar Rate Loans, then the Interest Period applicable to the Loans will be deemed to be an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid or prepaid in the original currency of such Loan and reborrowed in such other currency.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 12:00 p.m., in the case of any Eurodollar Rate Loan or Base Rate Loan on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (or, if such Borrowing is to be made on the Closing Date, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however,* that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Facility Lenders with respect to the relevant Facility.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than fifteen Interest Periods in effect at any one time.

Section 2.03 *Letters of Credit*.

(a) *The Letter of Credit Commitment*.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in U.S. Dollars for the account of the Borrower (or any of its Restricted Subsidiaries (i) so long as (x) the Borrower is a joint and several co-applicant and (y) the applicable L/C Issuer shall have received all documentation and other information with respect to such Restricted Subsidiary that such L/C Issuer reasonably determines is necessary in order to allow such L/C Issuer to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the Act and (ii) references to the "Borrower" in this Section 2.03 and elsewhere in this Agreement with respect to requests for Letters of Credit (including renewals or continuations thereof) shall be deemed to include any such Restricted Subsidiary), and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit issued by it; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the Total Revolving Credit Outstandings shall not exceed the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time, (x) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit and (z) the aggregate amount of L/C Obligations owing to an L/C Issuer shall not exceed the amount set forth opposite such L/C Issuer's name on Schedule 2.01 (as such Schedule may be amended with the consent of each affected L/C Issuer and the Borrower from time to time) under the caption "Letter of Credit Commitments" (*provided* that this clause (z) shall not apply to any Existing Letter of Credit) and no L/C Issuer shall be required to issue Letters of Credit in excess of its applicable amount so set forth; *provided* that it is understood and agreed that each L/C Issuer may, in its sole discretion, make L/C Credit Extensions in an aggregate amount above its respective share of the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Credit Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless such Letter of Credit is Cash Collateralized no less than fifteen days prior to the Letter of Credit Expiration Date at 105% of the face amount thereof.

(iii) No L/C Issuer shall 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 L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than $100,000 (provided such initial minimum amount shall not apply to any Existing Letter of Credit);

(D) except as otherwise agreed by such L/C Issuer, such Letter of Credit is to be denominated in a currency other than U.S. Dollars; or

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Revolving Credit Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to any required adjustment pursuant to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from the Letter of Credit then proposed to be issued and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 9 hereof with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article 9 hereof included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) *Procedures for Issuance and Amendment of Letters of Credit*; *Auto-Extension Letters of Credit*. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Officer of the Borrower. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than (x) in the case of Letters of Credit denominated in U.S. Dollars, 12:00 p.m. at least three Business Days (or such other date and time as the Administrative Agent and the applicable L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be and (y) in the case of Letters of Credit denominated in an Alternative Currency, 12:00 p.m. at least five Business Days (or such other date and time as the Administrative Agent and the applicable L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; (H) the requested currency of the requested Letter of Credit (which shall be U.S. Dollars or an Alternative Currency); *provided* that if the currency is not specified, the requested currency of the requested Letter of Credit shall be deemed to be U.S. Dollars; and (I) such other matters as the applicable L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable L/C Issuer or the Administrative Agent may reasonably require.

(i) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the applicable L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article 4 hereof shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage *times* the amount of such Letter of Credit.

(ii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that, unless otherwise agreed to by the applicable L/C Issuer, any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date unless such Letter of Credit is Cash Collateralized at 105% of the face amount thereof in accordance with this Agreement; *provided, however,* that the applicable L/C Issuer shall not permit any such extension if (A) the applicable L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (i) or (ii) of Section 2.03(a) or otherwise), or (B) it has received notice (in writing) on or before the day that is seven days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Credit Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations*.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the applicable L/C Issuer in U.S. Dollars. In the case of any such reimbursement in U.S. Dollars of a drawing as of the applicable Valuation Date under a Letter of Credit denominated in an Alternative Currency, the applicable L/C Issuer shall notify the Borrower of the U.S. Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the next Business Day following any payment by the applicable L/C Issuer under a Letter of Credit (or on the second Business Day following any payment by the applicable L/C Issuer if such notice is delivered to the Borrower after 11:00 a.m. on the date of any such payment) (each such applicable date, an "**Honor Date**"), the Borrower shall reimburse the applicable L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing as provided in this Section 2.03(c). If the Borrower fails to so reimburse the applicable L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (in U.S. Dollars in the case of a Letter of Credit denominated in U.S. Dollars, and expressed, in the case of a Letter of Credit denominated in an Alternative Currency, in U.S. Dollars in the amount of the U.S. Dollar Equivalent thereof, the "**Unreimbursed Amount**")), and the amount of such Revolving Credit Lender's Applicable Revolving Credit Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice).

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 12:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer in U.S. Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice) cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit issued by it, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however,* that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the applicable L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the applicable L/C Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the greater of the Federal Funds Effective Rate and a rate determined by the applicable L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the applicable L/C Issuer in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) *Repayment of Participations*.

(i) At any time after the applicable L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the applicable L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will promptly distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the applicable L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the applicable L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Revolving Credit Lender, at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

(e) *Obligations Absolute*. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any of its Subsidiaries.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid or such claim arises from the applicable L/C Issuer's gross negligence or willful misconduct (as determined by a final non-appealable order of a court of competent jurisdiction).

(f) *Role of L/C Issuer*. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Credit Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct (as determined by a final non-appealable order of a court of competent jurisdiction); or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however,* that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); *provided, however,* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and an L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which are determined by a final non-appealable order of a court of competent jurisdiction to have been caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, any L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuers shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Applicability of ISP*. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) *Letter of Credit Fees*. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage of the applicable Revolving Credit Facility, in U.S. Dollars, a Letter of Credit fee (the "**Letter of Credit Fee**") for each Letter of Credit equal to the Applicable Rate of the applicable Revolving Credit Facility times the U.S. Dollar Equivalent determined as of the last Business Day of each March, June, September and December of the daily amount available to be drawn under such Letter of Credit; *provided* that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer*. The Borrower shall pay directly to the applicable L/C Issuer for its own account, in U.S. Dollars, a fronting fee with respect to each Letter of Credit issued by such L/C Issuer, at a rate per annum of 0.125%, computed on the U.S. Dollar Equivalent determined as of the last Business Day of each March, June, September and December of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the last Business Day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) *Conflict with Issuer Documents*. In the event of any conflict or inconsistency between the terms hereof and the terms of any Issuer Document, the terms hereof shall control. To the extent any defaults, representations, or covenants contained in any Issuer Documents are more restrictive than the Events of Default, representations, or covenants contained herein, the Events of Default, representations and covenants herein shall control.

(k) *Provisions Related to Letters of Credit in respect of Other Revolving Commitments*. If the Letter of Credit Expiration Date in respect of any Class of Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if consented to by the L/C Issuer which issued such Letter of Credit, if one or more other Classes of Revolving Credit Commitments in respect of which the Letter of Credit Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which the applicable L/C Issuer has consented shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Sections 2.03(c) and (d)) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating Classes up to an aggregate amount not to exceed the aggregate amount of the unutilized Revolving Credit Commitments thereunder at such time and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in accordance with the terms hereof. Upon the maturity date of any Class of Revolving Credit Commitments, the Letter of Credit Sublimit may be reduced as agreed between the L/C Issuers and the Borrower, without the consent of any other Person.

(l) *Additional L/C Issuers*. The Borrower may, at any time and from time to time, designate one or more additional Revolving Credit Lenders or Affiliates of Revolving Credit Lenders to act as an L/C Issuer under the terms of this Agreement, with the consent of each of the Administrative Agent (which consent shall not be unreasonably withheld) and such Revolving Credit Lender(s) or Affiliate thereof. Any Revolving Credit Lender or Affiliate thereof designated as an L/C Issuer pursuant to this Section 2.03(l) shall be deemed to be the L/C Issuer with respect to Letters of Credit issued or to be issued by such Revolving Credit Lender or Affiliate thereof, and all references herein and in the other Loan Documents to the term "L/C Issuer" shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Credit Lender or Affiliate thereof in its capacity as L/C Issuer thereof, as the context shall require.

(m) *Reporting*. Not later than the third Business Day following the last day of each calendar month (or at such other intervals as the Administrative Agent and the applicable L/C Issuer shall agree), each L/C Issuer shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month, and showing the aggregate amount (if any) paid or payable by the Borrower to such L/C Issuer during such month.

Section 2.04 *[Reserved]*.

Section 2.05 *Prepayments*.

(a) *Optional*. The Borrower may, upon notice in the form of a Prepayment Notice delivered to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans or Revolving Credit Loans in whole or in part without premium or penalty (other than, (x) in the case of any Eurodollar Rate Loan, any amounts required pursuant to Section 3.05 and (y) in the case of any Term Loans, any premium contained in the applicable Joinder Agreement or Refinancing Amendment); *provided* that (A) such notice must be received by the Administrative Agent not later than 12:00 p.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) one Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify (i) the date and amount of such prepayment and (ii) the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any voluntary prepayment of a Loan pursuant to this Section 2.05(a) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts if required pursuant to Section 3.05. Each such prepayment of any outstanding Term Loans pursuant to this Section 2.05(a) shall be applied as between Facilities as directed by the Borrower and, within any given Facility, shall be applied as directed by the Borrower to the installments thereof (or, if no such direction is provided, in direct order of maturity). Subject to Section 2.16, all payments made pursuant to this Section 2.05(a) shall be applied on a pro rata basis to each Lender holding Loans of the applicable Facility being prepaid in accordance with the principal amount of the applicable Term Loans held thereby.

(b) Mandatory.

(i) Upon the incurrence or issuance by the Borrower or any of its Restricted Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.03 (except Credit Agreement Refinancing Indebtedness)), the Borrower shall prepay (or Cash Collateralize, as applicable) an aggregate principal amount of Pro Rata Obligations equal to 100% of the gross cash proceeds received by the Borrower or any of its Restricted Subsidiaries from any such Indebtedness less all reasonable and customary out-of-pocket legal, underwriting and other fees, costs and expenses incurred or reasonably anticipated to be incurred within 90 days thereof in connection therewith, within one Business Day following receipt thereof by the Borrower or such Restricted Subsidiary (such prepayments (or Cash Collateralization) to be applied as set forth in clauses (iii) and (v) below).

(ii) [reserved];

(iii) Subject to the next sentence, each prepayment (or Cash Collateralization, as applicable) of Pro Rata Obligations pursuant to this Section 2.05(b) (excluding clause (b)(iv) following) shall be applied, *first*, to the Term Loans held by all Term Lenders in accordance with their Applicable Percentages (allocated pro rata as among the Term Loans and to each Term Lender on a pro rata basis in accordance with the principal amount of the applicable Term Loans held thereby and to scheduled amortization payments in direct order of maturity), *second*, any excess after the application of such proceeds in accordance with clause *first* above, to the Revolving Credit Facility in the manner set forth in clause (v) of this Section 2.05(b) and *third*, any excess after the application of such proceeds in accordance with clauses *first* and *second* above may be retained by the Borrower; *provided* that any repayment required pursuant to clause (b)(i) shall be applied ratably to the Term Loans and amounts outstanding under the Revolving Credit Facility. Except with respect to Term Loans incurred in connection with any Refinancing Amendment or any Joinder Agreement (which, in each case, may be prepaid on a less than pro rata basis if expressly provided for in such Refinancing Amendment or Joinder Agreement), each prepayment pursuant to this Section 2.05(b) shall be applied ratably to each Class of Loans then outstanding entitled to payment pursuant to the prior sentence (*provided* that any prepayment of Loans with the Net Proceeds of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt). Any prepayment of a Loan pursuant to this Section 2.05(b) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(iv) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Commitments at such time (including, for the avoidance of doubt, as a result of the termination of any Class of Commitments on the Maturity Date with respect thereto), the Borrower shall immediately prepay Revolving Credit Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) (in an aggregate amount equal to 105% of the face amount thereof) in an aggregate amount sufficient to reduce the Total Revolving Credit Outstandings to the aggregate Revolving Credit Commitments. If for any reason the Outstanding Amount of L/C Obligations at any time exceed the Letter of Credit Sublimit at such time, the Borrower shall immediately prepay L/C Borrowings and/or Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce the Outstanding Amount of L/C Obligations to the Letter of Credit Sublimit.

(v) Prepayments of the Revolving Credit Facilities made pursuant to this Section 2.05(b), *first*, shall be applied ratably to the L/C Borrowings, *second*, shall be applied ratably to the outstanding Revolving Credit Loans held by all Revolving Credit Lenders in accordance with their Applicable Revolving Credit Percentages, and, *third*, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the applicable L/C Issuer or the Revolving Credit Lenders, as applicable. Prepayments of the Revolving Credit Facilities made pursuant to this Section 2.05(b) shall be applied ratably to the outstanding Revolving Credit Loans. Amounts to be applied pursuant to this Section 2.05(b) to the mandatory prepayment of Term Loans and Revolving Credit Loans shall be applied, as applicable, first to reduce outstanding Base Rate Loans and any amounts remaining after such application shall be applied as directed by the Borrower to prepay Eurodollar Rate Loans.

(vi) In the event that there are any Term Loans outstanding, each Term Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any prepayment of Term Loans required to be made by the Borrower pursuant to any mandatory prepayment provisions relating to asset sale proceeds, excess cash flow, insurance proceeds or condemnation proceeds set forth in any Joinder Agreement pursuant to which any Incremental Term Loan Commitments are established or any Incremental Term Loans are made, to decline all (but not a portion) of its Applicable Percentage of such prepayment (such declined amounts, the "**Declined Proceeds**"). Any Term Lender declining such prepayment shall give written notice thereof to the Administrative Agent by 11:00 a.m. no later than one Business Day after the date of such notice from the Administrative Agent. If a Lender fails to deliver a notice of election declining receipt of its Applicable Percentage of such mandatory prepayment to the Administrative Agent within the time frame specified above, any such failure will be deemed to constitute an acceptance of such Lender's Applicable Percentage of the total amount of such mandatory prepayment of Term Loans.

Section 2.06 *Termination or Reduction of Commitments*. (a) *Optional*. The Borrower may, upon notice to the Administrative Agent, terminate any Revolving Credit Facility (subject to the terms of Section 2.17) or the Letter of Credit Sublimit, or from time to time permanently reduce the Revolving Credit Commitments of any Class (subject to the terms of Section 2.17) or the Letter of Credit Sublimit; *provided* that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facilities if, after giving effect thereto and to any concurrent prepayments of the Revolving Credit Facilities hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facilities, (B) any Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments of such Revolving Credit Facility hereunder, the Total Revolving Credit Outstandings in respect of such Revolving Credit Facility would exceed such Revolving Credit Facility, or (C) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations would exceed the Letter of Credit Sublimit.

(a) *Mandatory*. If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess.

(b) *Application of Commitment Reductions*; *Payment of Fees*. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit or the Revolving Credit Commitments under this Section 2.06. Upon any reduction of any Revolving Credit Commitments, the Revolving Credit Commitments of each applicable Revolving Credit Lender shall be reduced by such Revolving Credit Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of any Revolving Credit Facility accrued until the effective date of any termination of such Revolving Credit Commitments shall be paid on the effective date of such termination.

Section 2.07 *Repayment of Loans*.

(a) *Incremental Term Loans*. In the event any Incremental Term Loans or Refinancing Term Loans are made, such Incremental Term Loans or Refinancing Term Loans shall be repaid in the amounts and dates set forth in the applicable Joinder Agreement or Refinancing Amendment with respect thereto and on the applicable Maturity Date thereof. All payments made pursuant to this Section 2.07(a) shall be applied on a pro rata basis to each Term Lender holding Term Loans of the applicable Facility or Class being repaid.

(b) *Revolving Credit Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the applicable Maturity Date for the Revolving Credit Facilities of a given Class the aggregate principal amount of all of its Revolving Credit Loans of such Class outstanding on such date.

Section 2.08 *Interest*.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period *plus* the Applicable Rate for Eurodollar Rate Loans under such Facility and (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate for Base Rate Loans under such Facility.

(b) (i) Automatically, upon the occurrence and while any Event of Default as described in Section 8.01(a), 8.01(f) or 8.01(g) exists, the Borrower shall pay interest on all overdue amounts then outstanding hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 *Fees*. In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee*. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage of the applicable Revolving Credit Facility, a commitment fee in U.S. Dollars equal to the Commitment Fee Rate with respect to the applicable Revolving Credit Facility under which such Revolving Credit Lender has a Revolving Credit Commitment *times* the actual daily amount by which the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. The commitment fee shall accrue at all times from the Closing Date until the applicable Maturity Date for the applicable Revolving Credit Commitments, including at any time during which one or more of the conditions in Section 4.02 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur following the Closing Date and on the applicable Maturity Date for the applicable Revolving Credit Commitments. The commitment fee shall be calculated quarterly in arrears.

(b) *Administrative Agent Fee*. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in the Agency Fee Letter and such other fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(c) *Other Fees*. The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement as a Lender on the Closing Date, as fee compensation for the funding of such Lender's funded and unfunded Revolving Credit Commitments, a closing fee in an amount separately agreed to by the Borrower and the Arrangers for the benefit of such Lenders on the Closing Date, payable to such Lender from the proceeds of the Revolving Credit Loans as and when funded on the Closing Date. Such closing fee shall be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.

Section 2.10 *Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate*.

(a) All computations of interest for Base Rate Loans based on the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year) which shall be either on the basis of a year of a 365 or 366 days or a 360-day year. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, notwithstanding Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower, the Administrative Agent or the Required Lenders determine that (i) the Secured Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Secured Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Sections 2.03(h), 2.08(b), 2.09(a) or under Article 8. The Borrower's obligations under this Section 2.10(b) shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder for 90 days after such termination and repayment.

Section 2.11 *Evidence of Debt*. (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(a) In addition to the accounts and records referred to in Section 2.11(a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

Section 2.12 *Payments Generally; Administrative Agent's Clawback*.

(a) *General*. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal and interest on L/C Obligations denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in U.S. Dollars and in Same Day Funds not later than 12:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on L/C Obligations denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in such Alternative Currency in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. If, for any reason, the Borrower is prohibited by any law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in U.S. Dollars in an amount equal to the U.S. Dollar Equivalent of the amount due in such Alternative Currency as of the date of payment. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m., in the case of payments in U.S. Dollars, or after the Applicable Time specified by the Administrative Agent, in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) *Funding by Lenders*; *Presumption by Administrative Agent*. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 p.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) *Payments by Borrower*; *Presumptions by Administrative Agent*. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Appropriate Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender, any L/C Issuer or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) *Failure to Satisfy Conditions Precedent*. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 or in the applicable Joinder Agreement or Refinancing Amendment are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) *Obligations of Lenders Several*. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(f) *Funding Source*. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) *Insufficient Funds*. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

Section 2.13 *Sharing of Payments by Lenders*. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided* that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 2.15, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to the Borrower or any Restricted Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply unless such purchase is made by the Borrower pursuant to Section 10.06(b)(vii)).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.14 *Incremental Facilities*.

(a) The Borrower may by written notice to the Administrative Agent elect to increase the existing Revolving Credit Commitments of any Class (any such increase, the "**Incremental Revolving Credit Commitments**") and/or incur one or more new term loan commitments and/or increase the commitments of any Class of Term Loans (the "**Incremental Term Loan Commitments**") by an amount not to exceed in the aggregate, at the time of incurrence, the Incremental Available Amount (and not less than $5,000,000 individually).

(b) Each such notice shall specify (i) the date (each, an "**Increased Amount Date**") on which the Borrower proposes that the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion); and (ii) the identity of each Lender or other Person, which must be an Eligible Assignee (each, an "**Incremental Revolving Loan Lender**" or "**Incremental Term Loan Lender**," as applicable) to whom the Borrower proposes any portion of such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, be allocated and the amounts of such allocations. Any Lender approached to provide all or a portion of the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, may elect or decline, in its sole discretion, to provide an Incremental Revolving Credit Commitment or Incremental Term Loan Commitment. Any Incremental Term Loan Commitments effected through the establishment of one or more term loan commitments made on an Increased Amount Date that are not fungible for United States federal income tax purposes with an existing Class of Term Loans shall be designated a separate Class of Incremental Term Loan Commitments for all purposes of this Agreement. Notwithstanding the foregoing, any Incremental Term Loans may be treated as part of the same Class as any other Incremental Term Loans if such Incremental Term Loans have identical terms (other than effective yield) and are fungible for United States federal income tax purposes with such other Incremental Term Loans.

(c) The Administrative Agent shall notify the Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (i) the Incremental Revolving Credit Commitments and the Incremental Revolving Loan Lenders or Incremental Term Loan Commitments and the Incremental Term Loan Lenders, as applicable and (ii) in the case of each notice to any applicable Revolving Credit Lender of any such given Class, the respective interests in such Revolving Credit Lender's Revolving Credit Loans of such Class, in each case subject to the assignments contemplated by this Section.

(d) Such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments shall become effective as of such Increased Amount Date; *provided* that:

(i) (x) subject, solely in the case of Incremental Term Loans, to Section 1.09(c), no Event of Default shall exist on such Increased Amount Date before or after giving effect to such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable and the extensions of credit to be made thereunder on such date; *provided* that this clause (i)(x) may be waived or limited as agreed in the Joinder Agreement between the Borrower and the applicable Incremental Term Loan Lenders; and (y) the representations and warranties of the Borrower and each other Loan Party contained in Article 5 hereof shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) on and as of such date, except in each case to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date); *provided* that, in the case of Incremental Term Loans incurred to finance an Investment in the nature of an acquisition, this clause (i)(y) may be waived or limited as agreed in the Joinder Agreement between the Borrower and the applicable Incremental Term Loan Lenders to Sections 5.01(a), 5.01(b), 5.02(a), 5.13, 5.17, 5.18, 5.19 (other than the first or second sentence thereof) and 5.20;

(ii) the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the Incremental Revolving Loan Lender(s) or Incremental Term Loan Lender(s), as applicable, and the Administrative Agent, each of which shall be recorded in the Register (and each Incremental Revolving Loan Lender and Incremental Term Loan Lender shall be subject to the requirements set forth in Section 3.01);

(iii) the Incremental Facilities shall be Guaranteed by the Guarantors (and, for the avoidance of doubt, no Person other than the Guarantors), rank *pari passu* in right of security with the other Facilities and shall not be secured by any property or assets other than the Collateral;

(iv) all fees and reasonable out-of-pocket expenses owing to the Administrative Agent and the Lenders (other than a Defaulting Lender) in respect of the Incremental Revolving Credit Commitments and Incremental Term Loan Commitments shall have been paid; and

(v) the Borrower shall deliver or cause to be delivered legal opinions, Officer's Certificates and such other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(e) On any Increased Amount Date on which Incremental Revolving Credit Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the existing Revolving Credit Lenders of the Class being so increased shall assign to each of the Incremental Revolving Loan Lenders, and each of the Incremental Revolving Loan Lenders shall purchase from each of the existing Revolving Credit Lenders of the Class being so increased, at the principal amount thereof (together with accrued interest), such interests in the Revolving Credit Loans of the Class being so increased and participations in Letters of Credit outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans and participations in Letters of Credit will be held by existing Revolving Credit Lenders of such Class and Incremental Revolving Loan Lenders ratably in accordance with their Revolving Credit Commitments of the Class being so increased after giving effect to the addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments of such Class, (ii) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment of the Class being so increased and each Loan made thereunder (an "**Incremental Revolving Loan**") shall be deemed, for all purposes, a Revolving Credit Loan of the Class being so increased and (iii) each Incremental Revolving Loan Lender shall become a Lender with respect to the Incremental Revolving Credit Commitment and all matters relating thereto.

(f) On any Increased Amount Date on which any Incremental Term Loan Commitments of any Class (or any Incremental Term Loan Commitments increasing any existing Term Loans) are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each Incremental Term Loan Lender of such Class or increase shall make a Loan to the Borrower (an "**Incremental Term Loan**") in an amount equal to its Incremental Term Loan Commitment of such Class or increase and (ii) each Incremental Term Loan Lender of such Class or increase shall become a Lender hereunder with respect to the Incremental Term Loan Commitment of such Class or increase and the Incremental Term Loans of such Class or increase made pursuant thereto.

(g) The terms (including pricing, "most favored nations" provisions, premiums, fees, rate floors, optional prepayment provisions, and/or mandatory prepayment provisions relating to excess cash flow, asset sale proceeds and condemnation proceeds) and conditions of the Incremental Term Loans and Incremental Term Loan Commitments shall be, except as otherwise explicitly set forth herein, as agreed in the Joinder Agreement between the Borrower, the applicable Incremental Term Loan Lenders providing such Incremental Term Loan Commitments and the Administrative Agent; *provided* that (i) the terms of such Indebtedness shall not be more restrictive, taken as a whole, to the Borrower and the other Loan Parties than those set forth in this Agreement prior to the execution of such Joinder Agreement unless (x) such terms apply only after the Latest Maturity Date at the time such Indebtedness is established or (y) this Agreement is amended so that such terms are also applicable for the benefit of any Lenders under any then-existing Facilities, (ii) the Weighted Average Life to Maturity of all Incremental Term Loans of any such Class shall be no shorter than (x) if there are no Term Loans outstanding at such time, 36 months and (y) if there are Term Loans outstanding at such time, the Weighted Average Life to Maturity of any other Term Loans at the time of the incurrence of such Incremental Term Loans, (iii) the applicable Incremental Term Loan Maturity Date of each Class shall be no earlier than the Latest Maturity Date at the time of the incurrence of such Incremental Term Loans, (iv) the pricing of each Class of Incremental Term Loans may be subject to "most favored nations" provisions if and to the extent set forth in the Joinder Agreement for such Class and (v) in the case of Incremental Term Loans, such Indebtedness may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments of Term Loans hereunder, as specified in the applicable Joinder Agreement, and in the case of Incremental Revolving Credit Commitments, such Incremental Revolving Credit Commitments may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory reductions of Revolving Credit Commitments hereunder, as specified in the applicable Joinder Agreement.

(h) The terms and provisions of the Incremental Revolving Loans and Incremental Revolving Credit Commitments shall be identical to the other Revolving Credit Loans of the Class being so increased and the Revolving Credit Commitments of the Class being so increased; *provided* that if the Incremental Revolving Loan Lenders require an interest rate in excess of the interest rate then applicable to the Revolving Credit Facility of the Class being so increased, the interest rate on the Revolving Credit Facility of such Class shall be increased to equal such required rate without further consent of the affected Lenders; *provided, further*, that if the Incremental Revolving Loan Lenders require a commitment fee on the undrawn portion of such Incremental Revolving Loans and Incremental Revolving Credit Commitments in excess of the commitment fee then applicable to the Revolving Credit Facility of the Class being so increased, the commitment fee on the Revolving Credit Facility of such Class shall be increased to equal such commitment fee without further consent of the affected Lenders.

(i) Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.14 (including any amendments that are not adverse to the interests of any Lender that are made to effectuate changes necessary or appropriate to enable any Incremental Term Loans that are intended to be fungible with any other Term Loans to be fungible with such other Term Loans, which shall include any amendments that modify the aggregate principal amount of scheduled installment payments to the extent such amendment does not decrease the installment payment an existing Term Lender would have received prior to giving effect to any such amendment).

(j) This Section 2.14 shall supersede any provisions in Section 2.13 or Section 10.01 to the contrary.

Section 2.15 *Cash Collateral*.

(a) *Certain Credit Support Events*. Upon the request of the Administrative Agent or any L/C Issuer if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize all L/C Obligations in an amount equal to 105% of the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, any L/C Issuer, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) *Grant of Security Interest*. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at a bank selected by the Borrower and reasonably acceptable to the Administrative Agent. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Revolving Credit Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) *Application*. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.05, 2.16 or Section 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) *Release*. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; *provided* that (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.16 *Defaulting Lenders*.

(a) *Adjustments*. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) *Waivers and Amendments*. That Defaulting Lender's right to approve or disapprove any amendment, modification, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of Required Lenders, Required Revolving Credit Lenders, and Required Facility Lenders and, in addition, Defaulting Lenders shall not be permitted to vote with respect to any other amendment, modification, waiver or consent pursuant to Section 10.01 or otherwise direct the Administrative Agent pursuant to the terms hereof or of the other Loan Documents; *provided* that any amendment, modification, waiver or consent requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender.

(ii) *Reallocation of Payments*. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuers hereunder; *third*, if so determined by the Administrative Agent or requested by any L/C Issuer to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, any L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against 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 Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings 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 Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees*. That Defaulting Lender (x) shall not be entitled to receive a commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h). With respect to any fee not required to be paid to any Defaulting Lender pursuant to this Section 2.16(a)(iii), the Borrower shall (1) pay to each Lender that is not a Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit that has been reallocated to such non-Defaulting Lender pursuant to Section 2.03, (2) pay to each L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) *Reallocation of Applicable Percentages to Reduce Fronting Exposure*. During any period in which there is a Defaulting Lender in respect of the Revolving Credit Facility, for purposes of computing the amount of the obligation of each Revolving Credit Lender that is not a Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Applicable Percentage" and "Applicable Revolving Credit Percentage" of each Revolving Credit Lender that is not a Defaulting Lender in respect of the Revolving Credit Facility shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Revolving Credit Lender becomes a Defaulting Lender, no Default exists; and (ii) the aggregate obligation of each Revolving Credit Lender that is not a Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (x) the Revolving Credit Commitment of that Revolving Credit Lender that is not a Defaulting Lender *minus* (y) the aggregate Outstanding Amount of the Revolving Credit Loans of such Revolving Credit Lender *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations. Subject to Section 10.22, no reallocation hereunder shall constitute a waiver 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.

(b) *Defaulting Lender Cure*. If the Borrower, the Administrative Agent and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders (and shall pay to such other Lenders any break funding costs that such other Lenders may incur as a result of such purchase) or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Revolving Credit Lenders in accordance with their Applicable Revolving Credit Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further,* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Revolving Credit Lender will constitute a waiver or release of any claim of any party hereunder arising from that Revolving Credit Lender's having been a Defaulting Lender.

Section 2.17 *Refinancing Facilities*.

(a) On one or more occasions, the Borrower may obtain, from any Lender or any other bank or financial institution or other institutional lender or investor that would constitute an Eligible Assignee if it were purchasing Loans hereunder and that agrees to provide any portion of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments, or Other Revolving Loans, Credit Agreement Refinancing Indebtedness in the form of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans, in each case pursuant to a Refinancing Amendment in accordance with this Section 2.17 (each, an "**Additional Refinancing Lender**"); *provided* that (i) the Administrative Agent and each L/C Issuer shall have consented (such consent not to be unreasonably withheld, conditioned, or delayed) to such Lender's or Additional Refinancing Lender's providing such Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans to the extent such consent, if any, would be required under Section 10.06 for an assignment of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments, or Other Revolving Loans, as applicable, to such Lender or Additional Refinancing Lender; *provided*, *further*, that the following terms are satisfied:

(i) any Refinancing Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) as among the various Classes of Term Loans (in accordance with the respective outstanding principal amounts thereof) in any voluntary or mandatory repayments or prepayments of Term Loans hereunder, as specified in the applicable Refinancing Amendment;

(ii) (x) all Other Revolving Commitments shall be deemed to be Revolving Credit Commitments for purposes of borrowings and prepayments of Revolving Credit Loans and participations in Letters of Credit and (y) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Commitments (and related outstandings), (B) repayments required upon the maturity date of the Other Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments) of Other Revolving Loans after the date of obtaining any Other Revolving Commitments shall be made as directed by the Borrower;

(iii) subject to the provisions of Section 2.03(k) to the extent dealing with Letters of Credit which mature or expire after a maturity date when there exist Other Revolving Commitments with a longer maturity date, all Letters of Credit shall be participated on a pro rata basis by all Lenders with Revolving Credit Commitments (including Other Revolving Commitments) in accordance with their Applicable Revolving Credit Percentage; and

(iv) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans.

(b) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and Officers' Certificates consistent with those delivered on the Closing Date other than changes to such legal opinions resulting from a Change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Security Documents as may be reasonably requested by the Administrative Agent in order to ensure that the enforceability of the Security Documents and the perfection and priority of the Liens thereunder are preserved and maintained.

(c) Each issuance of Credit Agreement Refinancing Indebtedness under Section 2.17(a) shall be in an aggregate principal amount that is not less than $5,000,000.

(d) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.17, and the Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment.

(e) This Section 2.17 shall supersede any provisions in Section 2.13 and 10.01 to the contrary, and nothing in Section 2.05 to the contrary shall prohibit the application of this Section 2.17.

ARTICLE 3.
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 *Taxes*.

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes*. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without deduction or withholding for any Taxes. If, however, applicable Laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) *Payment of Other Taxes by the Borrower*. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) *Tax Indemnifications*.

(i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) withheld or deducted by a Withholding Agent or paid by the Recipient, and any reasonable out of pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error (so long as such certificate is prepared in a commercially reasonable manner in accordance with applicable Laws). No Loan Party shall be required to compensate any Recipient pursuant to this Section 3.01 for any penalties and interests that would not have accrued if such Recipient furnished notice of such possible indemnification claim within 180 days after such Recipient receives notice from the applicable Governmental Authority of the specific Tax assessment giving rise to such indemnification claim.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and each L/C Issuer shall, and does hereby, severally indemnify:

(A) the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, against any and all Taxes incurred by or asserted against the Administrative Agent by an Governmental Authority as a result of the failure by such Lender or any L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy or similar deficiency of, any documentation required to be delivered by such Lender or any L/C Issuer, as the case may be, to the Administrative Agent pursuant to subsection (e)(ii); and

(B) the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for (x) any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (z) any Taxes attributable to such Lender's or L/C Issuer's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register.

(iii) A certificate as to the amount of such payment or liability delivered to any Lender or any L/C Issuer by the Borrower or the Administrative Agent shall be conclusive absent manifest error. Each Lender and L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this subsection (c).

(d) *Evidence of Payments*. Upon request by the Borrower or the Administrative Agent, as the case may be, as soon as possible after any payment of Taxes by any Loan Party or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Loan Party shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Loan Party, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Loan Party or the Administrative Agent, as the case may be.

(e) *Status of Lenders; Tax Documentation*.

(i) For purposes of this Section 3.01(e), the term "Lender" includes any L/C Issuer. Each Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when 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 Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the delivery, completion and execution of documentation (other than such documentation described in subsections (e)(ii)(A), (e)(ii)(B) and (e)(iii)) shall not be required if in the Lender's reasonable judgment such delivery, completion or execution would subject the 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, on or prior to the date on which a Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), but only to the extent it is legally entitled to do so,

(A) any Lender that is a Person shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements;

(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 reasonably requested by the recipient), 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 G-1 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) executed copies of Internal Revenue Service 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 G-2 or G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner together with the executed copies of the applicable IRS Forms;

(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 reasonably 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.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iv) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction or if any form or certification it previously delivered becomes obsolete or inaccurate or expires and (B) update any such form or certification or notify the Borrower and Administrative Agent in writing of its legal inability to do so.

(f) *Treatment of Certain Refunds*. At no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or L/C Issuer, as the case may be. If the Administrative Agent, any Lender or any L/C Issuer determines, in its sole discretion exercised reasonably, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Administrative Agent, such Lender or such L/C Issuer, as the case may be, related to the receipt of such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent, such Lender or such L/C Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or such L/C Issuer in the event the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person. Notwithstanding anything to the contrary in this subsection, in no event will the Administrative Agent, such Lender or such L/C Issuer be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Administrative Agent, such Lender or such L/C Issuer in a less favorable net after-Tax position than the Administrative Agent, such Lender or such L/C Issuer would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid.

(g) *Survival*. Each party's obligations under this Section 3.01 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or any L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02 *Illegality*. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of U.S. Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans in the affected currency or currencies or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), if such Loans are not denominated in U.S. Dollars, prepay such Loans, or if such Loans are denominated in U.S. Dollars, convert all such Loans of such Lender to Base Rate Loans or (y) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans (the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate), the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 *Inability to Determine Rates*. Subject to Section 3.08, if the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a)(i) deposits are not being offered to banks in the interbank market for the applicable amount and Interest Period of such Loan or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or (b) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then in each case, the Required Lenders will so notify the Administrative Agent and the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in U.S. Dollars, in the amount specified therein.

Section 3.04 *Increased Costs; Reserves on Eurodollar Rate Loans*.

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Recipient to any Tax (except for Indemnified Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Tax described in clause (a)(ii) or clause (b) through (d) of the definition of Excluded Taxes) on its loans, loan principal, letters of credit, commitment, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the interbank market, any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate 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 the Administrative Agent, any L/C Issuer or any Lender of making, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Administrative Agent, any Lender or any L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon the request of the Administrative Agent, such Lender or such L/C Issuer, the Borrower will pay to the Administrative Agent, such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate the Administrative Agent, such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided*, that the Borrower shall not be obligated to pay any such compensation unless the Lender or L/C Issuer requesting such compensation also is requesting compensation as a result of such Change in Law from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(a); *provided* that the Borrower shall not be required to compensate a Lender or a L/C Issuer pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) *Capital Requirements*. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered; *provided*, that the Borrower shall not be obligated to pay any such compensation unless the Lender or such L/C Issuer requesting such compensation also is requesting compensation as a result of such Change in Law from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(b).

(c) *Certificates for Reimbursement*. A certificate of a Lender or an L/C Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) *Delay in Requests*. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Reserves on Eurodollar Rate Loans*. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits (currently known as "**Eurodollar Liabilities**"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive and binding), which shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least ten days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender; *provided*, *further*, that the Borrower shall not be obligated to pay any such additional interest unless the Lender requesting such additional interest also is requesting additional interest from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(e). If a Lender fails to give notice ten days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten days from receipt of such notice.

Section 3.05 *Compensation for Losses*. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower (in the case of a borrowing, for a reason other than the failure of such Lender to make a Loan);

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 2.14, 3.06(b) or Section 10.13; or

(d) any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency in a different currency from the currency in which the applicable Letter of Credit is denominated (except to the extent an L/C Issuer has required payment of any drawing under a Letter of Credit in U.S. Dollars pursuant to Section 2.03(c)(i)), including any foreign exchange losses or loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or form fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Borrower shall also pay any customary and reasonable administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London or other offshore interbank market for the applicable currency for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender, as specified in this Section, delivered to the Borrower shall be conclusive absent manifest error.

Section 3.06 *Mitigation Obligations; Replacement of Lenders*.

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or such L/C Issuer shall, as applicable, 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 or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02 as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or such L/C Issuer in connection with any such designation or assignment.

(b) *Replacement of Lenders*. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a) which would eliminate such request for compensation or requirement to pay such additional amount, or if any Lender is a Defaulting Lender hereunder, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, replace such Lender in accordance with Section 10.13.

Section 3.07 *Survival*. All of the Borrower's obligations under this Article 3 shall survive the termination of the Aggregate Commitments, any assignment of rights by, or the replacement of, a Lender, repayment, satisfaction or discharge of all other Obligations hereunder, and resignation or replacement of the Administrative Agent.

Section 3.08 *Benchmark Replacement Setting*.

(a) *Benchmark Replacement*. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Contract shall be deemed not to be a "Loan Document" for purposes of this Section 3.08), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders of each Class.

(b) *Benchmark Replacement Conforming Changes*. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) *Notices; Standards for Decisions and Determinations*. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.08, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.08.

(d) *Unavailability of Tenor of Benchmark*. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or U.S.D. LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) *Benchmark Unavailability Period*. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Rate Borrowing of, conversion to or continuation of Eurodollar Rate 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 Base Rate 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 Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

ARTICLE 4.
CONDITIONS PRECEDENT

Section 4.01 *Conditions Precedent to the Closing Date*. The obligations of each L/C Issuer and each Lender to make the initial Credit Extensions on the Closing Date (if any) shall, in each case, be subject to the following conditions:

(a) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or "pdf" or similar electronic format (followed promptly by originals) unless otherwise specified, each properly executed by an Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent:

(i) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two Business Days prior to the Closing Date;

(ii) executed copies of (x) this Agreement, and (y) each Security Document set forth on Schedule 4.01(a)(ii), executed by each Loan Party thereto, together with:

(A) evidence that all filings under the UCC shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent; and

(B) any other documents and instruments as may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting first priority perfected Liens on the properties purported to be subject to the Security Documents set forth on Schedule 4.01(a)(ii), enforceable against all third parties in accordance with their terms;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Officer thereof authorized to act as an Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) an opinion from (A) Milbank LLP, counsel to the Loan Parties, and (B) local or other counsel in each of the jurisdictions listed on Schedule 4.01(a)(iv), in each case as reasonably requested by the Administrative Agent, in the case of each of clauses (A) and (B), in form and substance reasonably satisfactory to the Administrative Agent;

(v) a certificate attesting to the Solvency of the Borrower and its Subsidiaries (taken as a whole) on the Closing Date after giving effect to the Transactions, from the Chief Financial Officer of the Borrower, substantially in the form attached hereto as Exhibit J;

(vi) a certificate attesting to the compliance with clauses (d), (e), (f) and (h) of this Section 4.01 on the Closing Date from an Officer of the Borrower; and

(vii) if any Loans are to be made on the Closing Date, a Committed Loan Notice pursuant to Section 2.02.

(b) All reasonable fees and out-of-pocket expenses due and payable to the Lenders, the Arrangers and the Administrative Agent and required to be paid on or prior to the Closing Date pursuant to Agency Fee Letter shall have been paid or shall have been authorized to be deducted from the proceeds of the initial funding under the Facilities, so long as any such fees or expenses not expressly set forth in the Agency Fee Letter have been have been invoiced not less than three business days prior to the Closing Date.

(c) The Administrative Agent and the Lenders shall have received at least three Business Days prior to the Closing Date, to the extent requested in writing at least seven Business Days prior to the Closing Date, all documentation and other information that the Administrative Agent and the Lenders reasonably determine is necessary in order to allow the Administrative Agent and the Lenders to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

(d) The representations and warranties of the Borrower and each other Loan Party contained in Article 5 hereof shall be true and correct in all material respects; *provided* that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(e) There has been no change, occurrence or development since September 30, 2020 that could reasonably be expected to have a Material Adverse Effect.

(f) At the time of and immediately after giving effect to the Transactions, no Default shall have occurred and be continuing.

(g) [Reserved].

(h) Prior to or substantially concurrently with the Closing Date, (i) the 2026 Senior Secured Notes shall have been issued and (ii) the Existing Credit Agreement shall have been paid off in full and terminated and all liens thereunder shall have been released pursuant to a customary payoff letter reasonably satisfactory to the Administrative Agent.

Section 4.02 *Conditions to All Credit Extensions after the Closing Date*. The obligation of each Lender to honor any Request for Credit Extension other than a Letter of Credit, and if such Request for Credit Extension is for a Letter of Credit, the obligation of the applicable L/C Issuer to honor such Request for Credit Extension, after the Closing Date (other than (x) pursuant to a Conversion/ Continuation Notice and (y) in connection with the funding of an Incremental Term Loan) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article 5 or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, that are qualified by materiality shall be true and correct (after giving effect to any qualification therein) on and as of the date of such Credit Extension, and each of the representations and warranties of the Borrower and each other Loan Party contained in any other Loan Document or in any document furnished at any time under or in connection herewith or therewith that are not qualified by materiality shall be true and correct in all material respects on and as of the date of such Credit Extension, except in each case to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than pursuant to a Conversion/Continuation Notice) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE 5.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders on the Closing Date and on the date of each Credit Extension as contemplated by Section 4.02 as to each of the matters set forth below that:

Section 5.01 *Existence, Qualification and Power*. Each Loan Party and each Restricted Subsidiary (other than any Immaterial Subsidiary) thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party; and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 *Authorization; No Contravention*. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material contract to which such Person is a party or affecting such Person or the properties of such Person or any of its Restricted Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

Section 5.03 *Governmental Authorization; Other Consents*. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents or (c) the perfection or maintenance of the Liens created under the Security Documents (including the priority thereof), except for (x) filings and actions completed on or prior to the Closing Date and as contemplated hereby and by the Security Documents necessary to perfect or maintain the Liens on the Collateral granted by the Loan Parties in favor of the Collateral Agent for the benefit of the Secured Parties (including, without limitation, UCC financing statements and filings in the United States Patent and Trademark Office and the United States Copyright Office) and (y) approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect.

Section 5.04 *Binding Effect*. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 5.05 *Financial Statements; No Material Adverse Effect*.

(a) The annual financial statements of the Borrower and its Subsidiaries dated as of December 31, 2019 previously delivered to the Lenders and any annual financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 6.01(a): (A) were (or will be when delivered) prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (B) fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (C) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness to the extent required by GAAP and (D) were (or will be when delivered) accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand.

(b) The quarterly financial statements of the Borrower and its Subsidiaries dated September 30, 2020 previously delivered to the Lenders and any Quarterly Financial Statements of the Borrower and its Subsidiaries delivered hereunder: (A) were (or will be when delivered) each prepared in accordance with GAAP consistently applied throughout the period covered thereby, subject only to normal year-end audit adjustments and the absence of footnotes, except as otherwise expressly noted therein, (B) fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby and (C) were (or will be when delivered) accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand.

(c) Since September 30, 2020, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 *Litigation*. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or the consummation of the Transaction or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 5.07 *Ownership of Property*. Each of the Borrower and each Restricted Subsidiary has good record and marketable title to all owned property, or valid leasehold interests or valid licenses in all leased or licensed property, reasonably necessary or used in the ordinary conduct of its business, except for such defects in title, or failure to obtain a valid leasehold interest or valid license as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.08 *Environmental*.

(a) Each of the Loan Parties and its Restricted Subsidiaries is and has been in compliance with all Environmental Laws and has received and maintained in full force and effect all Environmental Permits required for its current operations, except where non-compliance could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) To the Loan Parties' knowledge, no Hazardous Materials are present, or have been released by any Person, whether related or unrelated to any Loan Party in, on, within, above, under, affecting or emanating from any real property currently or previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries (i) in a quantity, location, manner or state requiring any cleanup, investigation or remedial action pursuant to any Environmental Laws; (ii) in violation or alleged violation of any Environmental Laws; or (iii) which has or could give rise to any Environmental Liability, including any claim pursuant to any Environmental Laws against any Loan Party or its Restricted Subsidiaries, except, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) No Environmental Claim is pending or, to the Loan Parties' knowledge, proposed, threatened or anticipated, with respect to or in connection with any Loan Party or its Restricted Subsidiaries or any real properties now or previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) No properties now or, to the Loan Parties' knowledge, previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries nor, to the Loan Parties' knowledge, any property to which any Loan Party or its Restricted Subsidiaries has transported or arranged for the transportation of any Hazardous Material is listed or, to the Loan Parties' knowledge, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA) or on any similar federal, state or foreign list of sites requiring investigation or cleanup, nor to the knowledge of the Loan Parties, is any such property anticipated or to the Loan Parties' knowledge, threatened to be placed on any such list, except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) To the Loan Parties' knowledge, there are no Environmental Liabilities of any Loan Party or its Restricted Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there are no facts, conditions, situations or set of circumstances which could reasonably be expected to result in or be the basis for any such Environmental Liability, except, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) No Loan Party or any of its Restricted Subsidiaries has assumed or retained any Environmental Liability of any other Person, except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

This Section 5.08 contains the sole and exclusive representations and warranties of the Loan Parties with respect to environmental matters.

Section 5.09 *Insurance*. The properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

Section 5.10 *Taxes*. The Borrower and its Restricted Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed by it, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income, business, franchise or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent that failure to do so could not reasonably be expected to result in Material Adverse Effect.

Section 5.11 *ERISA Compliance; Labor Matters*.

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Each Pension Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion/advisory letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no strikes, or other labor disputes pending or, to the Borrower's knowledge, threatened against the Borrower or any of its Restricted Subsidiaries, the hours worked and payments made to employees of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters and all payments due from the Borrower or any of its Restricted Subsidiaries or for which any claim may be made against the Borrower or any of its Restricted 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 Restricted Subsidiary to the extent required by GAAP except, in each case, as would not reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, the consummation of the Transactions 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 Restricted Subsidiaries (or any predecessor) is a party or by which the Borrower or any of its Restricted Subsidiaries (or any predecessor) is bound.

(c) With respect to each scheme or arrangement mandated by a government other than the United States (a "**Foreign Government Scheme or Arrangement**") and with respect to each employee benefit plan maintained, contributed to or required to be contributed to by any Loan Party or any Restricted Subsidiary of any Loan Party primarily for the benefit of any employees located outside of the United States (a "**Foreign Plan**"):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Closing Date, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles ("**Fully Funded**"), except where the failure to be Fully Funded, in each case, could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

Section 5.12 *Subsidiaries; Equity Interests*. As of the Closing Date, the Borrower has no Restricted Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.12, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Borrower or one or more of its Subsidiaries in the amounts specified on Part (a) of Schedule 5.12 free and clear of all Liens except Permitted Liens. As of the Closing Date, (x) the Borrower has no Equity Interests in any other Person other than (i) those specifically disclosed in Part (b) of Schedule 5.12 and (ii) Equity Interests in Subsidiaries and (y) there are no Unrestricted Subsidiaries other than those listed on Part (c) of Schedule 5.12. All of the outstanding Equity Interests in the Borrower have been validly issued and are fully paid and nonassessable.

Section 5.13 *Margin Regulations; Investment Company Act*.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower or any Restricted Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.14 *Disclosure*.

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the Transactions or delivered hereunder or under any other Loan Document (in each case, taken as a whole and as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 5.15 *Compliance with Laws*. Each Loan Party and each Restricted Subsidiary thereof is in compliance in all material respects with the requirements of all Laws (including the Act, the Civil Asset Forfeiture Reform Act and the Controlled Substances Act), and all orders, writs, injunctions and decrees applicable to it or to its properties except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; *provided* that, with respect to the Controlled Substances Act and the Civil Asset Forfeiture Reform Act, such Loan Party or Restricted Subsidiary shall only be deemed to be non-compliant if so determined by a final, non-appealable judgment of a court of competent jurisdiction or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.16 *Intellectual Property; Licenses, Etc.* The Borrower and its Restricted Subsidiaries own or possess the right to use all of the trademarks, service marks, trade names, trade dress, logos, domain names and all good will associated therewith, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses, and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses as currently conducted, without conflict with the rights of any other Person, except where the failure to own or possess the right to use any such IP Rights would not reasonably be expected to have a Material Adverse Effect. The Borrower and its Restricted Subsidiaries hold all right, title and interest in and to such owned IP Rights free and clear of any Lien (other than Liens permitted by Section 7.01). No slogan or other advertising device, product, process, method, substance, part or other material or activity now employed, or now contemplated to be employed, by the Borrower or any Restricted Subsidiary infringes upon, misappropriates or otherwise violates any rights held by any other Person, except where such infringement, misappropriation or other violation would not reasonably be expected to have a Material Adverse Effect.

Section 5.17 *Solvency*. The Borrower and its Subsidiaries on a consolidated basis are Solvent.

Section 5.18 *Security Documents*. The provisions of the applicable Security Documents are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien, subject, in the case of any Collateral other than Collateral consisting of Equity Interests and to Permitted Liens on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Section 5.19 *Anti-Terrorism; Anti-Money Laundering; Etc.* The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Restricted Subsidiaries and their respective directors, officers, and employees with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Restricted Subsidiaries and, to the Borrower's knowledge, its and its Restricted Subsidiaries' respective officers and directors, are in compliance with Anti-Corruption Laws in all material respects and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. No Loan Party nor any of its Restricted Subsidiaries (i) is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States (50 U.S.C. App. §§ 1 et seq.), (ii) is in violation in any material respect of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto, (C) the Act or (D) any other laws relating to terrorism or money laundering (collectively, the "**Anti-Terrorism Laws**") or (iii) is a Sanctioned Person. No part of the proceeds of any Loan or Letter of Credit hereunder will be unlawfully used to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country, or in any other manner that will result in any violation in any material respect by any Loan Party or any Lender or Arranger, the Administrative Agent or any L/C Issuer of any Anti-Terrorism Laws or Sanctions.

Section 5.20 *Foreign Corrupt Practices Act.* 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 Anti-Corruption Laws.

Section 5.21 *Affected Financial Institution*. No Loan Party is an Affected Financial Institution.

ARTICLE 6.
AFFIRMATIVE COVENANTS

From and after the Closing Date, so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the L/C Issuer have been made) shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03, 6.13, 6.14 and 6.16) cause each Restricted Subsidiary to:

Section 6.01 *Financial Statements*. Deliver to the Administrative Agent:

(a) within 90 days after the end of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending December 31, 2020), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, changes in Shareholders' Equity, and cash flows for such Fiscal Year, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of RSM US LLP or any other independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" qualification, "going concern" exception or "going concern" explanatory paragraph (other than a "going concern" qualification, exception or explanatory paragraph resulting solely from an upcoming maturity date under any Indebtedness occurring within one year from the time such opinion is delivered) or any qualification or exception paragraph as to the scope of such audit; *provided,* that the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand;

(b) in connection with each of the first three fiscal quarters of each Fiscal Year of the Borrower (commencing with the fiscal quarter ending March 31, 2021), within 45 days after the end of each such fiscal quarter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's Fiscal Year then ended, and the related consolidated statements of changes in Shareholders' Equity, and cash flows for the portion of the Borrower's Fiscal Year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by the chief executive officer, chief financial officer, chief accounting officer, treasurer or controller of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower; *provided,* that the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand (the "**Quarterly Financial Statements**"); and

(c) not later than 60 days after the end of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending December 31, 2021), an annual budget of the Borrower and its Restricted Subsidiaries on a consolidated basis consisting of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Restricted Subsidiaries on a quarterly basis for the then-current Fiscal Year (including the Fiscal Year in which the Latest Maturity Date occurs, if such Fiscal Year is the then-current Fiscal Year).

The Borrower may satisfy the requirements of Section 6.01(a) by delivery, within the time period specified in the SEC's rules and regulations for non-accelerated filers, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC and solely to the extent that such annual report contained an unqualified opinion as required by clause (a), and the provisions of Section 6.01(b), by delivery within the time period specified in the SEC's rules and regulations for non-accelerated filers (except for any delay permitted by Rule 13a-13(a) promulgated under the Exchange Act), reports on Form 10- Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC and in such case, shall not be required separately to furnish such information under Section 6.01(a) or (b).

Section 6.02 *Certificates; Other Information*. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate (including, showing the calculation of the financial covenant set forth in Section 7.11 if then in effect) signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower;

(b) promptly after any request by the Administrative Agent or the Required Lenders acting through the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Restricted Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, whether or not otherwise required to be delivered to the Administrative Agent pursuant hereto; *provided* that to the extent any such documents are filed with the SEC, such documents shall be deemed delivered pursuant to this Section 6.02(c) at the time of and so long as the Borrower notifies the Administrative Agent (by facsimile or electronic mail) of the filing with the SEC of any such documents; and

(d) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or the Required Lenders, through the Administrative Agent, may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (1) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02 or (2) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information within the meaning of United States federal securities laws ("**MNPI**") with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any MNPI with respect to the Borrower or its Subsidiaries, or their respective securities (*provided, however,* that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information" (and the Administrative Agent agrees that only Borrower Materials marked "PUBLIC" will be made available on such portion of the Platform); and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower materials "PUBLIC."

Section 6.03 *Notices*. Promptly notify the Administrative Agent when an Officer of the Borrower has knowledge:

(a) of the occurrence of any Default; or

(b) of any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of an Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document, if any, that have been breached.

Section 6.04 *Preservation of Existence, Etc.* (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05; (b) maintain all rights, privileges, permits, and licenses reasonably necessary in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) preserve, maintain, renew and keep in full force and effect all of its registered patents, trademarks, trade names, trade dress and service marks, the failure of which to so preserve, maintain, renew or keep in full force and effect could reasonably be expected to have a Material Adverse Effect; and (d) pay, discharge or otherwise satisfy as the same shall become due and payable all federal, state and other material Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Restricted Subsidiary.

Section 6.05 *Maintenance of Properties*. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, and (b) make all necessary repairs thereto and renewals and replacements thereof, in each case with respect to clauses (a) and (b) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 6.06 *Maintenance of Insurance*. Maintain with financially sound and reputable insurance companies (that are not Affiliates of the Borrower) insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, which insurance (except as to Excluded Subsidiaries and Immaterial Subsidiaries) shall name the Administrative Agent as loss payee (in the case of casualty insurance) or additional insured (in the case of liability insurance); *provided*, *however*, if any insurance proceeds are paid on account of a casualty to assets or properties of any Loan Party whether or not constituting Collateral and at such time no Event of Default shall have occurred and is continuing, then the Administrative Agent shall take such actions, including endorsement, to cause any such insurance proceeds to be promptly remitted to the Borrower to be used by the Borrower or such Loan Party in any manner not prohibited by this Agreement.

Section 6.07 *Compliance with Laws*. Comply with the requirements of all Laws (including the Controlled Substances Act and the Civil Asset Forfeiture Reform Act) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; *provided* that, with respect to the Controlled Substances Act and the Civil Asset Forfeiture Reform Act, such Loan Party or Restricted Subsidiary shall only be deemed to be non-compliant if so determined by a final, non-appealable judgment of a court of competent jurisdiction or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Maintain in effect and enforce policies and procedures designed to ensure compliance in all material respects by the Borrower and its Restricted Subsidiaries and their respective directors, officers, and employees with Anti-Corruption Laws and applicable Sanctions.

Section 6.08 *Books and Records*. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions, and if and to the extent required by GAAP, matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be.

Section 6.09 *Inspection Rights*. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and to make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired (but in no event more than one time per Fiscal Year of the Borrower and with the Borrower being required to pay all reasonable out-of-pocket expenses for one visit each Fiscal Year) by the Administrative Agent, upon reasonable advance notice to the Borrower; *provided, however*, that when an Event of Default exists the Administrative Agent (or any of its respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours without limitation as to frequency.

Section 6.10 *Use of Proceeds*. Use the proceeds of the Credit Extensions (a) to pay any fees, costs and expenses related to the Transaction and (b) for working capital, acquisitions, Investments and for other general corporate purposes not in contravention of any Law or of any Loan Document.

Section 6.11 *Covenant to Guarantee Obligations and Give Security*. Upon the formation or acquisition by any Loan Party of any new direct or indirect Subsidiary (other than any Excluded Subsidiary or any Immaterial Subsidiary), or upon a Subsidiary of any Loan Party ceasing to be an Excluded Subsidiary or ceasing to be an Immaterial Subsidiary, as applicable, the Borrower shall, at the Borrower's expense:

(i) within 30 days (as such time may be extended by the Administrative Agent in its reasonable discretion) following the creation or acquisition of such Subsidiary or following such Subsidiary ceasing to be an Excluded Subsidiary or ceasing to be an Immaterial Subsidiary, as applicable, cause such Subsidiary to (a) become a Guarantor and provide the Collateral Agent, for the benefit of the Secured Parties, a Lien on its assets (other than Excluded Assets) to secure the Obligations by executing and delivering to the Administrative Agent a joinder to the Guarantee Agreement, a joinder to the Security Agreement and/or such other document as the Administrative Agent shall deem appropriate for such purpose and (b) deliver to the Administrative Agent such other customary documentation reasonably requested by the Administrative Agent including, without limitation, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Administrative Agent;

(ii) within 30 days after such formation or acquisition or after such Subsidiary ceases to be an Excluded Subsidiary or ceases to be an Immaterial Subsidiary, as applicable, cause each direct and indirect parent (to the extent such parent is a Loan Party) of such Subsidiary to pledge its interests in such Subsidiary to the Collateral Agent, for the benefit of the Secured Parties, to secure such parent's Obligations (if it has not already done so) and deliver to the Collateral Agent all certificated Equity Interests of such Subsidiary (if any) together with transfer powers in respect thereof endorsed in blank, and cause such Subsidiary:

(A) to duly execute and deliver to the Collateral Agent, for the benefit of the Secured Parties, any additional collateral and security agreements or supplements thereto, as reasonably specified by and in form and substance reasonably satisfactory to the Administrative Agent to secure payment of all the Obligations of such Subsidiary and constituting Liens on the personal property (other than Excluded Assets) of such Subsidiary; and

(B) to take whatever action (including the filing of UCC financing statements) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting first priority perfected Liens on Collateral purported to be subject to the Security Agreement and other agreements delivered pursuant to this Section 6.11; and

(iii) within 30 days after such formation or acquisition or after such Subsidiary ceases to be an Excluded Subsidiary or ceases to be an Immaterial Subsidiary, as applicable, deliver to the Administrative Agent, upon the request of the Administrative Agent, a signed copy of a favorable opinion, addressed to the Administrative Agent, Collateral Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i) and (ii) above, and as to such other matters as the Administrative Agent may reasonably request.

Notwithstanding any of the foregoing to the contrary or Section 6.15 below, (i) the Collateral shall exclude Excluded Assets, and shall be subject to the limitations and exclusions set forth in the applicable Security Documents, and (ii) no Foreign Subsidiary shall be required to become a Guarantor or grant a Lien on any of its assets (other than a pledge of Equity Interests in any of its Subsidiaries pursuant to clause (ii) above to the extent otherwise required hereunder (*provided, however*, no legal opinions of foreign counsel shall be required)) to secure any of the Obligations.

Section 6.12 *Lender Calls*. If requested in writing by the Administrative Agent, participate in an annual meeting of the Administrative Agent and the Lenders to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent, including by telephonic conference calls) at such time as may be agreed to by the Borrower and the Administrative Agent. The Borrower shall be required to invite the Lenders to participate in any quarterly conference calls made available to the holders of any of the 2026 Senior Secured Notes.

Section 6.13 *Further Assurances*. Promptly upon request by the Administrative Agent or the Required Lenders through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents or Section 6.11, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Restricted Subsidiaries is or is to be a party, and cause each of its Restricted Subsidiaries to do so; *provided* that, notwithstanding the foregoing, the Loan Parties shall not be required to take actions to create or perfect the security interest of the Collateral Agent (x) on any property that is covered by a certificate of title statute of any jurisdiction under the law of which the indication of a security interest on such certificate is required as a condition of perfection thereof, or (y) if recordation of a security interest with the Federal Aviation Administration or the International Registry of Mobile Assets is required as a condition of perfection thereof.

Section 6.14 *Beneficial Ownership*. Promptly after any request by the Administrative Agent or the Required Lenders acting through the Administrative Agent, deliver all documentation and other information that the Administrative Agent and the Required Lenders reasonably determine is necessary in order to allow the Administrative Agent and the Lenders to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

Section 6.15 *Designation of Restricted and Unrestricted Subsidiaries*.

The Borrower may designate any Restricted Subsidiary to be an Unrestricted Subsidiary in accordance with the definition of "Unrestricted Subsidiary"; *provided* that, immediately after giving effect to such designation, the Borrower would be in pro forma compliance with the financial covenant set forth in Section 7.11, whether or not such covenant is applicable, no Default or Event of Default shall have occurred and (iii) either (1) the Borrower could incur $1.00 of additional Indebtedness pursuant to Section 7.03(a) or (2) (A) the Fixed Charge Coverage Ratio for the Borrower and its Restricted Subsidiaries would be equal to or greater than such ratio immediately prior to such designation or (B) the Consolidated Leverage Ratio for the Borrower and its Restricted Subsidiaries would be equal to or less than such ratio immediately prior to such designation

In addition, (a) any Unrestricted Subsidiary must be a Person of which shares of the Equity Interests (including partnership interests) entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or other governing body are owned, directly or indirectly, by the Borrower, (b) such designation will be treated as an Investment by the Borrower or such Restricted Subsidiary, as applicable, made at the time of the designation and (c) each of (I) the Subsidiary to be so designated and (II) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender with respect to such Indebtedness has recourse to any of the assets of the Borrower or any Restricted Subsidiary.

All outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the designated Unrestricted Subsidiary will be treated as an Investment by the Borrower or such Restricted Subsidiary, as applicable, made at the time of the designation. The amount of all such outstanding Investments will be the aggregate fair market value of such Investments at the time of the designation. The designation will not be permitted if such Investment would not be permitted under Section 7.06 at that time and if such Restricted Subsidiary does not otherwise meet the definition of an Unrestricted Subsidiary. Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary shall be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of the board resolution of the Borrower giving effect to such designation and a certificate signed by an Officer of the Borrower certifying that such designation complied with the foregoing conditions and the conditions set forth in the definition of "Unrestricted Subsidiary" and was permitted by this Section 6.15.

If, at any time, any Unrestricted Subsidiary would fail to meet any of the requirements of an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and (1) any Indebtedness of such Subsidiary, (2) any Liens of such Subsidiary and (3) any Investments of such Subsidiary, in each case shall be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date.

The Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation shall be deemed to be an incurrence, on the date of designation, of Indebtedness, Liens and Investments by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness, Liens and Investments of such Unrestricted Subsidiary and such designation shall only be permitted if as of such date, (1) such Indebtedness, Liens and Investments are permitted and (2) no Event of Default shall have occurred and be continuing.

The Specified Subsidiaries are designated as Unrestricted Subsidiaries under this Agreement as of the Closing Date, and any direct or indirect now or hereafter created or acquired Subsidiary of any of the foregoing. The foregoing sentence does not prohibit or limit in any respect the ability of the Borrower to designate any of the foregoing Persons as Restricted Subsidiaries and thereafter re-designate any or all of such Persons as Unrestricted Subsidiaries, in each case, subject to the terms and conditions of this Section 6.17.

Section 6.16 *Post-Closing Covenant.* On or prior to the date set forth in Schedule 6.16, the Borrower shall, or shall cause the other Loan Parties to deliver the items set forth in Schedule 6.16.

ARTICLE 7.
NEGATIVE COVENANTS

From and after the Closing Date, so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the L/C Issuer have been made) shall remain outstanding, the Borrower shall not, nor shall it permit any Restricted Subsidiary to:

Section 7.01 *Liens*.

(a) Directly or indirectly, create, incur or assume any Lien (each a "**Subject Lien**") that secures obligations under any Indebtedness, unless, with respect to Liens on property not constituting Collateral, (i) if such Liens secure Indebtedness that is subordinated to the Obligations or the Guarantees, the Obligations and any related Guarantees are secured by a Lien on such property, assets or proceeds that are senior in priority to such Liens or (ii) in all other cases, the Obligations and any related Guarantees are equally and ratably secured, and *provided further* that any Lien created on such non-Collateral pursuant to the preceding clause shall be automatically and unconditionally released and discharged upon the release and discharge of the Subject Lien.

(b) Clause (a) shall not apply to Permitted Liens.

(c) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "**Increased Amount**" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of the Borrower, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (d) of the definition of Indebtedness.

Section 7.02 *[Reserved]*

Section 7.03 *Indebtedness*. Directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively "**Incur**") any Indebtedness (including Acquired Debt) and will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; other than

(a) if either (x) the Fixed Charge Coverage Ratio of the Borrower and its Subsidiaries (on a consolidated combined basis) for the Applicable Measurement Period would have been at least 2.00:1.00 determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom) or (y) the Consolidated Leverage Ratio for the Applicable Measurement Period would have been equal to or less than 3.50:1.00, in each case, as if the additional Indebtedness had been incurred or Preferred Stock had been issued, and the application of proceeds therefrom had occurred, at the beginning of such four-quarter period; *provided*, *however* that the foregoing limitation shall not apply to Indebtedness of any Person that becomes a Restricted Subsidiary in connection with an acquisition or any other Investment not prohibited by Section 7.06 (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary) if such Indebtedness is outstanding prior to such Person becoming a Restricted Subsidiary and to the extent such Indebtedness is not incurred in contemplation of such acquisition or Investment or

(b) Any of the following (collectively, "**Permitted Debt**"):

(i) the incurrence by the Borrower or a Restricted Subsidiary of the Obligations;

(ii) the incurrence by the Borrower and the Guarantors of Indebtedness represented by the 2026 Senior Secured Notes (including any Guarantee thereof);

(iii) any Indebtedness of the Borrower and its Restricted Subsidiaries in existence on the Closing Date (exclusive of Indebtedness described in clause (b)(i) and (b)(ii) above);

(iv) Indebtedness (including Capitalized Lease Obligations and purchase money obligations), Disqualified Stock and Preferred Stock incurred by the Borrower or any Restricted Subsidiary to finance the purchase, lease, construction, installation, repair, expansion or improvement of property (real or personal and including, for the avoidance of doubt, intellectual property), plant or equipment or other fixed or capital assets used or useful in a Permitted Business (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness then outstanding and incurred pursuant to this clause (d) does not exceed the greater of (x) $35,000,000 and (y) 35% of Consolidated EBITDA;

(v) Indebtedness incurred by the Borrower or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit or similar instruments issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; *provided, however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 60 days following such drawing or incurrence;

(vi) Indebtedness arising from agreements of the Borrower or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn-outs, seller financing or similar obligations, in each case incurred or assumed in connection with the disposition or acquisition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided, however*, that the maximum assumable liability in respect of all such Indebtedness incurred with respect to any disposition shall at no time exceed the gross proceeds including noncash proceeds (the fair market value of such noncash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Borrower and any Restricted Subsidiaries in connection with a disposition;

(vii) Indebtedness of the Borrower owed to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owed to and held by the Borrower or any other Restricted Subsidiary; *provided*, however, that (A) any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary) shall be deemed, in each case, to constitute the incurrence of such Indebtedness by the issuer thereof and (B) if the Borrower or a Guarantor is the obligor on such Indebtedness, such Indebtedness is expressly subordinated in right of payment to the Obligations;

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to the Borrower or a Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Borrower or a Restricted Subsidiary) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(ix) Hedging Obligations of the Borrower or any Restricted Subsidiary (excluding Hedging Obligations entered into for speculative purposes);

(x) obligations in respect of self-insurance and performance and surety bonds, appeal bonds and other similar types of bonds and performance guarantees statutory, export or import indemnities, customs and completion guarantees (not for borrowed money) and similar obligations provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit or similar instruments related thereto, in each case in the ordinary course of business;

(xi) Indebtedness of the Borrower or any Restricted Subsidiary or Preferred Stock of any Restricted Subsidiary issued to the Borrower or another Restricted Subsidiary (which, if issued by a Guarantor, shall only be issued to another Guarantor or the Borrower) not otherwise permitted hereunder in an aggregate principal amount or liquidation preference which, when aggregated with the principal amount and liquidation preference of all other Indebtedness and Preferred Stock then outstanding and incurred pursuant to this clause (xi) does not at any one time outstanding exceed the greater of $40,000,000 and 40% of Consolidated EBITDA (it being understood that any Indebtedness or Preferred Stock incurred pursuant to this clause (xi) shall cease to be deemed incurred or outstanding for purposes of this clause (xi) but shall be deemed incurred pursuant to the first paragraph of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred or issued such Indebtedness or Preferred Stock pursuant to Section 7.03(a));

(xii) any guarantee by the Borrower or any Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by the Borrower or such Restricted Subsidiary is permitted under the terms hereunder; *provided* that if such Indebtedness is by its express terms subordinated in right of payment to the Obligations, any such guarantee of such Guarantor with respect to such Indebtedness shall be subordinated in right of payment to the Obligations substantially to the same extent as such Indebtedness is subordinated to the Obligations of such Restricted Subsidiary;

(xiii) the incurrence by the Borrower or any Restricted Subsidiary of Indebtedness or the issuance of Preferred Stock by a Restricted Subsidiary that serves to refund, replace, renew, extend, defease or refinance (collectively, "refinance" with "refinances," "refinanced" and "refinancing" having a correlative meaning) any Indebtedness or Preferred Stock of the Borrower or any of its Restricted Subsidiaries, incurred or issued as permitted under Section 7.03(a) or clauses (b)(ii), (b)(iii), (b)(iv), and (b)(xi) above, this clause (b)(xiii) and clauses (b)(xiv), (b)(xvii), (b)(xix), (b)(xxii), (b)(xxxii) and (b)(xxxvi) below (*provided* that any amounts incurred under this clause (xiii) as Refinancing Indebtedness (as defined below) of clauses (iv) and (xi) above and clauses (xxii) and (xxxii) below, shall reduce the amount available under such clause so long as the Refinancing Indebtedness remains outstanding) or any Indebtedness issued to so refund or refinance such Indebtedness including additional Indebtedness incurred to pay accrued but unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, and fees (including costs and expenses) in connection therewith (the "**Refinancing Indebtedness**") prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness (A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness or Preferred Stock being refinanced, (B) to the extent such Refinancing Indebtedness refinances Indebtedness subordinated or pari passu to the Obligations, such Refinancing Indebtedness is subordinated or pari passu to the Obligations, at least to the same extent as the Indebtedness being refinanced or refunded, and (C) shall not include (x) Indebtedness or Preferred Stock of a Subsidiary that is not a Guarantor that refinances Indebtedness or Preferred Stock of the Borrower or a Guarantor or (y) Indebtedness or Preferred Stock of the Borrower or a Restricted Subsidiary that refinances Indebtedness or Preferred Stock of an Unrestricted Subsidiary, (D) shall not be in a principal amount in excess of the principal amount of, premium, if any, accrued interest on, and related fees and expenses of, the Indebtedness being refunded or refinanced and (E) shall not have a stated maturity date that is earlier than the earlier of the Latest Maturity Date; *provided* that clauses (A) and (E) will not apply to any refunding or refinancing of secured Indebtedness;

(xiv) Indebtedness or Preferred Stock of (x) the Borrower or any Restricted Subsidiary incurred or issued to finance an acquisition or (y) Persons that are acquired by the Borrower or any Restricted Subsidiary or are merged, consolidated or amalgamated with or into the Borrower or any Restricted Subsidiary or from whom the Borrower acquires all or substantially all of such Person's assets in accordance with the terms hereof (whether or not such Indebtedness or issuance of Preferred Stock is incurred or issued in contemplation of such acquisition, merger, consolidation or amalgamation); *provided* that after giving pro forma effect to such incurrence of Indebtedness described in the preceding clauses (x) and (y), either:

(A) the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 7.03(a) or

(B) the Fixed Charge Coverage Ratio would be greater than such Fixed Charge Coverage Ratio immediately prior to such acquisition or merger, consolidation or amalgamation; or

(C) the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in Section 7.03(a) or the Consolidated Leverage Ratio would be equal to or less than such Consolidated Leverage Ratio immediately prior to such acquisition or merger, consolidation or amalgamation;

(xv) (i) Indebtedness arising from the honoring by a bank or financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and (ii) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business or consistent with past practice of the Borrower and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries;

(xvi) Indebtedness of the Borrower or any of its Restricted Subsidiaries supported by a letter of credit, bank guarantee or other instrument issued pursuant to this Agreement in a principal amount not in excess of the stated amount of such letter of credit, bank guarantee or other instrument;;

(xvii) COVID-19 Relief Funds;

(xviii) Indebtedness consisting of promissory notes issued by the Borrower or any Guarantor to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any of its direct or indirect parent entities permitted by Section 7.06;

(xix) Contribution Indebtedness;

(xx) [reserved];

(xxi) Indebtedness of the Borrower or any Restricted Subsidiary consisting of the financing of insurance premiums in the ordinary course of business;

(xxii) Indebtedness of any non-Guarantor Subsidiary, *provided, however*, that the aggregate principal amount of all Indebtedness incurred and then outstanding under this clause (xxii) does not exceed the greater of (x) $25,000,000 and (y) an amount equal to 25% of Consolidated EBITDA;

(xxiii) Indebtedness due to any landlord in connection with the financing by such landlord of leasehold improvements;

(xxiv) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xxv) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(xxvi) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(xxvii) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Transactions, any acquisition or any Permitted Investment;

(xxviii) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any Investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted hereunder;

(xxix) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xxx) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

(xxxi) [reserved];

(xxxii) Indebtedness, Disqualified Stock or Preferred Stock of the Borrower or any of its Restricted Subsidiaries incurred or issued to finance, or assumed in connection with, an acquisition or Investment in a principal amount not to exceed the greater of (x) $30,000,000 and (y) 30% of Consolidated EBITDA of the Borrower together with all other outstanding Indebtedness or Preferred Stock issued under this clause (b)(xxxii) (it being understood that any Indebtedness or Preferred Stock incurred pursuant to this clause (b)(xxxii) shall cease to be deemed incurred or outstanding for purposes of this clause (b)(xxxii) but shall be deemed incurred pursuant to the first paragraph of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred or issued such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant);

(xxxiii) Indebtedness in the form of Capitalized Lease Obligations arising out of any sale and lease-back transaction;

(xxxiv) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business or consistent with past practice;

(xxxv) unfunded pension fund and other employee benefits plan obligations and liabilities incurred in the ordinary course of business or consistent with past practice; and

(xxxvi) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Section 7.03 (a) and (b) above.

For purposes of determining compliance with this Section 7.03, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clause (b) above, or is entitled to be incurred pursuant clause (a), the Borrower will be permitted to divide and classify and later reclassify such item of Indebtedness in any manner that complies with this covenant, and such item of Indebtedness will be treated as having been incurred pursuant to only one of such categories. Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03 or Section 7.01. Additionally, all or any portion of any item of Indebtedness may later be reclassified and/or re-divided as having been incurred pursuant to Section 7.03(a) or under any category of Permitted Debt described above so long as such Indebtedness is permitted to be incurred pursuant to such provision at the time of reclassification.

For purposes of determining compliance with any United States dollar restriction on the incurrence of Indebtedness where the Indebtedness incurred is denominated in a different currency, the amount of such Indebtedness will be the U.S. Dollar Equivalent determined on the date of the incurrence of such Indebtedness; *provided*, *however*, that if any such Indebtedness denominated in a different currency is subject to a currency agreement with respect to United States dollars covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in United States dollars will be as provided in such currency agreement. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebtedness being refinanced will be the U.S. Dollar Equivalent of the Indebtedness being refinanced, except to the extent that (1) such U.S. Dollar Equivalent was determined based on a currency agreement, in which case the refinancing Indebtedness will be determined in accordance with the preceding sentence, or (2) the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the U.S. Dollar Equivalent of such excess will be determined on the date such refinancing Indebtedness is incurred. At the time of incurrence, the Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in this Section 7.03 without giving pro forma effect to the Indebtedness incurred pursuant to such paragraph or any other clause of the definition of Permitted Debt when calculating the amount of Indebtedness that may be incurred pursuant to Section 7.03(a). Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this covenant. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided*, that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 7.03.

With respect to the Obligations, the full amount of the commitments hereunder shall be the "Reserved Indebtedness Amount" for purposes of the Fixed Charge Coverage Ratio, Secured Leverage Ratio or the Consolidated Leverage Ratio, as applicable, on the date of any incurrence of any Indebtedness in reliance on such definitions.

Section 7.04 *Fundamental Changes*. Directly or indirectly: (1) consolidate or merge with or into another Person unless the Borrower is the surviving entity, or with respect to any Guarantor, such Guarantor is the surviving entity or the surviving entity becomes a guarantor of the Obligations; or (2) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to another Person that is not the Borrower or a Guarantor (or a Person that will become a Guarantor substantially simultaneously with such transaction).

This Section 7.04 will not will not be applicable to (a) any Non-Guarantor Subsidiary consolidating with, merging into or selling, assigning, transferring, conveying, leasing or otherwise disposing of all or part of its properties and assets to the Borrower, a Guarantor or to another Non-Guarantor Subsidiary and (b) the Borrower or a Guarantor merging with an Affiliate solely for the purpose of reincorporating the Borrower, as the case may be, in the jurisdiction of another state of the United States.

Section 7.05 *Dispositions.* Make or enter into any agreement to make any Disposition, except:

(a) a disposition of Cash Equivalents or obsolete, damaged, unnecessary, unsuitable, used or worn out property, equipment or other assets in the ordinary course of business or inventory (or other assets) held for sale in the ordinary course of business and dispositions of property no longer used or useful or economically practicable in the conduct of the business of the Borrower and its Restricted Subsidiaries or the disposition of inventory, goods or other assets in the ordinary course of business or no longer useful in the ordinary course of the Borrower's business;

(b) Dispositions for the fair market value (as determined at the time of contractually agreeing to such Disposition) of the assets or Equity Interests issued or sold or otherwise disposed of; *provided* that

(i) except in the case of a Permitted Asset Swap, at least 75% of the consideration received in the Disposition, by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents or Replacement Assets, and

(ii) For purposes of clause (i) above, the amount of (A) any liabilities (as shown on the Borrower's or the applicable Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Borrower or any Restricted Subsidiary (other than liabilities in excess of $10,000,000 that are by their terms subordinated to the Obligations) that are assumed by the transferee of any such assets or are terminated, cancelled or otherwise cease to be obligations of the Borrower in connection with such Disposition and, in each case from which the Borrower and all Restricted Subsidiaries have been validly released by all creditors in writing, (B) any securities or other obligations or assets received by the Borrower or such Restricted Subsidiary from such transferee that are converted by the Borrower or Restricted Subsidiary into cash (to the extent of the cash received) within 270 days following the closing of such Disposition, (C) any other assets used or useful in the business of the Borrower and its Restricted Subsidiaries or any similar business or and (D) any Designated Non-Cash Consideration received by the Borrower or any of its Restricted Subsidiaries in respect of such Disposition having an aggregate fair market value (as determined in good faith by the Borrower), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not to exceed the greater of (x) $15,000,000 and (y) an amount equal to 15.00% of EBITDA of the Borrower on the date on which such Designated Non-Cash Consideration is received (with the fair market value of each item of Designated Non-Cash Consideration being measured at the Borrower's option either at the time of contractually agreeing to such Disposition or at the time received without giving effect to subsequent changes in value), shall be deemed to be cash;

(c) the granting of a Lien permitted by Section 7.01 or the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, pursuant to Section 7.06;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of related transactions with an aggregate fair market value of less than $15,000,000;

(e) any disposition of property or assets, or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to another Restricted Subsidiary;

(f) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with past practice or that does not materially interfere with the business of the Borrower as then in effect;

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

(h) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating net proceeds) dispositions necessary or advisable (as determined in good faith by the Borrower) in order to consummate any acquisition of any Person, business or assets;

(i) disposition of an account receivable in connection with the collection or compromise thereof;

(j) foreclosures, condemnation, expropriation, forced dispositions, eminent domain or any similar action (whether by deed of condemnation or otherwise) with respect to assets or the granting of Liens not prohibited hereunder, and transfers of any property that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement or upon receipt of the net proceeds of such casualty event the granting of Liens not prohibited hereunder;

(k) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business;

(l) any exchange of assets for Permitted Business Assets (including a combination of Permitted Business Assets and a de minimis amount of Cash Equivalents) of comparable or greater market value, as determined in good faith by the Borrower;

(m) the licensing, sublicensing or cross-licensing of intellectual property or other general intangibles;

(n) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(o) dispositions of Investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements or rights of first refusal between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

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

(q) the disposition of any assets (including Equity Interests of a Restricted Subsidiary) (i) acquired after the Closing Date in a transaction permitted hereunder, which assets are not used or useful in the core or principal business of the Borrower and its Restricted Subsidiaries, or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(r) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the net proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(s) any sale and lease-back transaction in an amount not to exceed $25,000,000;

(t) 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;

(u) the unwinding or voluntary termination of any Hedging Obligations;

(v) any disposition in connection with the Transactions; and

(w) the sale, transfer or other disposition of any assets in the TMSA Account.

Notwithstanding anything in this Section 7.05 to the contrary, dispositions under this Section 7.05 (except for clauses (i), (k) and (s)) shall only be permitted if (i) no Event of Default exists or would result from such Disposition as of the date of the agreement governing such Disposition (ii) the consideration received for the Disposition shall be in an amount equal to fair market value thereof and (iii) no less than 75% of such consideration shall be paid in cash or Cash Equivalents.

In no event shall the Borrower or any Restricted Subsidiary voluntarily dispose (which, for the avoidance of doubt, shall include any such transfers to an Unrestricted Subsidiary) of any Specified Intellectual Property to any person who is, in the case of the Borrower or a Guarantor, not the Borrower or a Guarantor, or in the case of a Non-Guarantor Subsidiary, not the Borrower or a Restricted Subsidiary, other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles.

In the event that a transaction (or any portion thereof) meets the criteria of this Section 7.05 and would also be a permitted Restricted Payment or Permitted Investment, the Borrower, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Disposition permitted hereunder and/or one or more of the types of permitted Restricted Payments or Permitted Investments.

Section 7.06 *Restricted Payments*. Directly or indirectly:

(a) declare or pay any dividend or make any other distribution on account of the Borrower's or any of its Restricted Subsidiaries' Equity Interests (in each case, solely to a holder of Equity Interests in such Person's capacity as a holder of such Equity Interests), including any dividend or distribution payable in connection with any merger or consolidation (other than (A) dividends or distributions by the Borrower payable in Equity Interests (other than Disqualified Stock) of the Borrower or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock), (B) dividends or distributions by a Restricted Subsidiary payable to the Borrower or any other Restricted Subsidiary or (C) in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, pro rata dividends or distributions to minority stockholders of such Restricted Subsidiary (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation), *provided* that the Borrower or one of its Restricted Subsidiaries receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(b) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Borrower or any direct or indirect parent entity of the Borrower held by any Person (other than by a Restricted Subsidiary), including in connection with any merger or consolidation;

(c) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness (other than (x) Indebtedness permitted under Section 7.03(b)(vii) or 7.03(b)(viii), (y) the purchase, repurchase or other acquisition or retirement of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase, acquisition or retirement or (z) the giving of notice of redemption with respect to transactions described in clause (ii) or (iii) below); or

(d) make any Restricted Investment;

(all such payments and other actions set forth in Section 7.06(a) through (d) being collectively referred to as "**Restricted Payments**"), unless, at the time of and after giving effect to such Restricted Payment:

(i) no Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(ii) at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period the Borrower would have been permitted to incur at least $1.00 of additional Indebtedness under Section 7.03(a); and

(iii) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made (and not rescinded or returned) by the Borrower and its Restricted Subsidiaries after the Closing Date (excluding Restricted Payments permitted by clauses (e)(ii), (e)(iii), (e)(iv), (e)(v), (e)(vii), (e)(ix), (e)(x), (e)(xii), (e)(xiii), (e)(xiv), (e)(xv), (e)(xvi), (e)(xviii) and (e)(xx) of this Section 7.06; *provided* that the calculation of Restricted Payments shall also exclude the amounts paid or distributed pursuant to clause (e)(a) of this Section 7.06 to the extent that the declaration of such dividend or other distribution shall have previously been included as a Restricted Payment), is less than the sum, without duplication, of:

(A) an amount, not less than zero in the aggregate, equal to 50% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period) from January 1, 2021 to the end of the Borrower's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100% of such deficit); *plus*

(B) 100% of the aggregate net cash proceeds and the fair market value of property and marketable securities received by the Borrower after the Closing Date from the issue or sale of (x) Equity Interests of the Borrower or any direct or indirect parent of the Borrower to the extent the proceeds are contributed to the Borrower (including Retired Capital Stock (as defined below) and Equity Interests issued upon exercise of options or warrants) but excluding (i) cash proceeds received from the sale of Equity Interests of the Borrower and, to the extent actually contributed to the Borrower, Equity Interests of the Borrower's direct or indirect parent entities to members of management, directors, consultants or independent contractors of the Borrower, any direct or indirect parent entity of the Borrower and the Subsidiaries of the Borrower after the Closing Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (e)(iv) of this Section 7.06, (ii) cash proceeds received from the sale of Refunding Capital Stock (as defined below) to the extent such amounts have been applied to Restricted Payments made in accordance with clause (e)(ii) of this Section 7.06, (iii) Designated Preferred Stock or amounts contributed from the issuance of Designated Preferred Stock by any direct or indirect parent entity of the Borrower, (iv) the Cash Contribution Amount, (v) Disqualified Stock, (vi) Excluded Contributions and (vii) Equity Interests or convertible debt securities of the Borrower sold to a Restricted Subsidiary or (y) debt securities or other Indebtedness of the Borrower (in each case, whether issued before or after the Closing Date) that has been converted into or exchanged for Equity Interests of the Borrower (other than Disqualified Stock or Designated Preferred Stock or debt securities that have been converted into or exchanged for Disqualified Stock or Designated Preferred Stock); *plus*

(C) 100% of the aggregate amount of cash and the fair market value of property and marketable securities contributed to the capital of the Borrower after the Closing Date, other than (i) by a Restricted Subsidiary, (ii) any Excluded Contributions, (iii) any Disqualified Stock, (iv) any Refunding Capital Stock, (v) any Designated Preferred Stock, (vi) the Cash Contribution Amount and (vii) cash proceeds applied to Restricted Payments made in accordance with clause (e)(iv) of this Section 7.06; *plus*

(D) to the extent not already included in Consolidated Net Income or Consolidated EBITDA, as applicable, 100% of the aggregate amount received in cash and the fair market value of property and marketable securities after the Closing Date by means of (i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of Restricted Investments made by the Borrower or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Borrower or its Restricted Subsidiaries and repayments of loans or advances which constitute Restricted Investments of the Borrower or its Restricted Subsidiaries or (ii) the sale (other than to the Borrower or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary or a dividend or other distribution from an Unrestricted Subsidiary; *plus*

(E) in the case of the (i) redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, (ii) merger or consolidation of an Unrestricted Subsidiary into the Borrower or a Restricted Subsidiary or (iii) transfer of assets of an Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Board of Directors of the Borrower in good faith at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, consolidation or transfer of assets (other than to the extent such Investment constituted a Permitted Investment); *plus*

(F) the greater of (i) $25,000,000 and 25% of Consolidated EBITDA.

(e) Notwithstanding the foregoing provisions of this Section 7.06, the following Restricted Payments shall be permitted:

(i) the payment of any dividend or other distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of notice of redemption, if at the date of declaration or notice such payment would have complied with the provisions hereof;

(ii) the (A) redemption, repurchase or other acquisition or retirement of any Equity Interests of the Borrower or any direct or indirect parent entity of the Borrower ("***Retired Capital Stock***") or Indebtedness subordinated to the 2026 Senior Secured Notes in exchange for or out of the net cash proceeds of the sale (other than to a Restricted Subsidiary or the Borrower) of Equity Interests of the Borrower or contributions to the equity capital of the Borrower (other than from a Subsidiary or an employee stock ownership plan or any trust established by the Borrower or any of its Subsidiaries) (in each case, other than Disqualified Stock and the Cash Contribution Amount) ("***Refunding Capital Stock***") so long as any such redemption, repurchase or other acquisition or retirement 120 days after the sale or issuance of such Refunding Capital Stock; or (B) declaration and payment of dividends on the Retired Capital Stock out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary or the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any of its Subsidiaries) of Refunding Capital Stock;

(iii) the defeasance, redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the sale of, new Indebtedness of the Borrower or a Guarantor which is incurred in compliance with Section 7.03 so long as (i) such new Indebtedness is subordinated to the Obligations thereof at least to the same extent as such Indebtedness subordinated to the Obligations so redeemed, repurchased, acquired or retired, (ii) such new Indebtedness has a final scheduled maturity date equal to or later than 90 days after the earlier of (x) the latest then applicable Maturity Date and (y) the Subordinated Indebtedness redeemed, repurchased, or otherwise acquired,(iii) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Indebtedness subordinated to the Obligations being so redeemed, repurchased, acquired or retired and (iv) any such defeasance, redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness occurs within 120 days after the sale or issuance of such new Indebtedness;

(iv) Restricted Payments to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (including, for these purposes, phantom or similar types of awards) of the Borrower or any of its direct or indirect parent entities held by any future, present or former employee, director, consultant or independent contractor of the Borrower, its Subsidiaries or any of its direct or indirect parent entities (or their permitted transferees, assigns, estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit or severance plan, agreement or arrangement; *provided, however*, that the aggregate amount of Restricted Payments made under this clause (iv) does not exceed in any calendar year $15,000,000 (with any unused amounts in any calendar year being carried over to the two immediately succeeding calendar years); and *provided, further*, that such amount in any calendar year may be increased by an amount not to exceed (A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, Equity Interests of any of its direct or indirect parent entities, in each case to members of management, directors or consultants of the Borrower, any of its Subsidiaries or any of its direct or indirect parent entities that occurs after the Closing Date *plus* (B) the amount of any cash bonuses otherwise payable to members of management, directors or consultants of the Borrower or any of its Subsidiaries or any of its direct or indirect parent entities that are foregone in return for the receipt of Equity Interests of the Borrower or any of its direct or indirect parent entities *plus* (C) the cash proceeds of "key man" life insurance policies received by the Borrower or its Restricted Subsidiaries after the Closing Date (*provided* that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any calendar year) (it being understood that the forgiveness of any debt by such Person shall not be a Restricted Payment hereunder) *less* (D) the amount of any Restricted Payments previously made pursuant to clauses (A) and (B) of this clause (iv);

(v) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Borrower or any Restricted Subsidiary or any class or Preferred Stock issued by a Restricted Subsidiary, in each case, issued or incurred in accordance with the provisions hereof to the extent such dividends are included in the definition of "Fixed Charges" for such entity;

(vi) (A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Borrower or any of its Restricted Subsidiaries after the Closing Date, (B) the declaration and payment of dividends to a parent entity, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent entity issued after the Closing Date; *provided* that the amount of dividends paid pursuant to this clause (B) shall not exceed the aggregate amount of cash actually contributed to the Borrower from the sale of such Designated Preferred Stock; or (C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (B) of this paragraph; *provided, however*, in the case of each of clause (A) and clause (C) of this clause (vi), that for the Applicable Measurement Period at the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, the Borrower could incur $1.00 of additional Indebtedness under Section 7.03(a);

(vii) repurchases of Equity Interests (i) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or (ii) deemed to occur in connection with withholding to pay other taxes payable in connection with the vesting or exercise of Equity Interests or any other equity award held or beneficially owned by any future, present or former employee, director, officer, manager or consultant;

(viii) (A) the payment of dividends on the Borrower's common stock (or the payment of dividends to any direct or indirect parent entity of the Borrower, as the case may be, to fund the payment by any such parent Borrower of the Borrower of dividends on such entity's common stock), in an aggregate amount per annum not to exceed 6% of Market Capitalization or (B) in lieu of all or a portion of the dividends permitted by clause (A), any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of the Borrower's Equity Interests (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any direct or indirect parent Borrower of the Borrower to fund the payment by such direct or indirect parent Borrower of the Borrower of dividends on such entity's Equity Interests) for aggregate consideration that, when taken together with dividends permitted by clause (A), does not exceed the amount contemplated by clause (A);

(ix) Restricted Payments that are made with Excluded Contributions, *provided* that at the time of such Restricted Payment, no Event of Default, shall have occurred and be continuing or would occur as a consequence thereof;

(x) other Restricted Payments in an amount not to exceed the greater of $25,000,000 and 25% of Consolidated EBITDA;

(xi) [reserved];

(xii) the declaration and payment of dividends to, or the making of loans to, a direct or indirect parent entity of the Borrower in amounts required for such Person to pay, without duplication:

(A) franchise taxes and other fees, taxes and expenses required to maintain its corporate existence;

(B) so long as the Borrower is a member of a group filing a consolidated, combined or unitary income tax return with such Person as the parent of such group, taxes imposed on or measured by income (however denominated) to the extent such taxes are attributable to the income of the Borrower and its Restricted Subsidiaries and, to the extent of the amount actually received from the Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of the Unrestricted Subsidiaries, *provided, however*, that in each case the amount of such payments in any fiscal year does not exceed the amount of income taxes that each of the Borrower, the relevant Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) would be required to pay for such fiscal year were each of the Borrower, its Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) to pay such taxes as a stand-alone taxpayer or stand-alone consolidated, combined or unitary income tax group, as applicable ("***Permitted Tax Distributions***");

(C) customary salary, bonus, severance, indemnification obligations and other benefits payable to officers, directors, consultants, independent contractors, and employees of such direct or indirect parent entity of the Borrower to the extent such salaries, bonuses, severance, indemnification obligations and other benefits are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries;

(D) general corporate overhead and operating expenses for such direct or indirect parent entity of the Borrower to the extent such expenses are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries; and

(E) reasonable fees and expenses incurred in connection with any successful or unsuccessful debt or equity offering or other financing transaction by such direct or indirect parent entity of the Borrower.

(xiii) Restricted Payments after the Closing Date in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Borrower or any direct or indirect parent entity of the Borrower; *provided, however*, that any such cash payment shall not be for the purpose of evading the limitation of this covenant (as determined in good faith by the Board of Directors of the Borrower);

(xiv) dividends or other distributions of Capital Stock of Unrestricted Subsidiaries or distributions of Indebtedness owed to the Borrower or any direct or indirect parent of the Borrower by any Unrestricted Subsidiary;

(xv) any Restricted Payment used to fund or consummate the Transactions and the fees and expenses related thereto;

(xvi) Restricted Payments to any direct or indirect parent entity to finance, or to any direct or indirect parent entity for the purpose of paying to any other direct or indirect parent entity to finance, any Investment that, if consummated by the Borrower, would be a Permitted Investment; *provided* that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such parent entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or any Restricted Subsidiary or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 7.04) of the Person formed or acquired into the Borrower or any Restricted Subsidiary in order to consummate such acquisition or Investment, in each case, in accordance with the requirements of Section 6.13;

(xvii) [reserved];

(xviii) any Restricted Payment; *provided* that on a pro forma basis after giving effect to such Restricted Payment, the Secured Leverage Ratio would be equal to or less than 2.25:1.00, *provided* that at the time of such Restricted Payment, no Event of Default, shall have occurred and be continuing or would occur as a consequence thereof;

(xix) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness consisting of Acquired Debt;

(xx) mandatory redemptions of Disqualified Stock of the Borrower or any of its Restricted Subsidiaries;

(xxi) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, merger or transfer of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, that complies with Section 7.04;

(xxii) (i) the conversion or exchange of any Permitted Convertible Indebtedness in accordance with its terms into or for shares of Equity Interests (other than Disqualified Stock) of the Borrower and the making of a payment of cash in lieu of fractional shares of the Borrower's Equity Interests (other than Disqualified Stock) deliverable upon any such conversion or exchange, (ii) the delivery of cash in connection with any conversion or exchange of any Permitted Convertible Indebtedness in an aggregate amount since the Closing Date governing such Permitted Convertible Indebtedness not to exceed the sum of (x) the principal amount of such Permitted Convertible Indebtedness, as applicable, and (y) the amount of any payments required to be made to the Borrower or any of its Subsidiaries upon the exercise, settlement, termination or unwind of any related Permitted Bond Hedge Transaction substantially concurrently with, or a commercially reasonable period of time before or after, the settlement date for the exchange or conversion of such relevant Permitted Convertible Indebtedness or (iii) payments of interest under any Permitted Convertible Indebtedness;

(xxiii) any payments in connection with the repurchase, exchange or inducement of the conversion or exchange, as the case may be, of Permitted Convertible Indebtedness by delivery of shares of Borrower's common stock and/or a different series of Permitted Convertible Indebtedness (which series (x) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted and (y) has terms, conditions and covenants (other than, for the avoidance of doubt, interest rate, conversion rate, conversion price and conversion rate adjustment provisions) that are no less favorable to Borrower than the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted (as determined by the Borrower in good faith)) (any such series of Permitted Convertible Indebtedness, "Refinancing Convertible Notes") and/or by payment of cash (in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of shares of Borrower's common stock and/or Refinancing Convertible Notes plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso); provided that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted, the Borrower shall (and, for the avoidance of doubt, shall be permitted hereunder to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Permitted Convertible Indebtedness that are so repurchased, exchanged or converted; and

(xxiv) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower's Capital Stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in Capital Stock upon any early termination thereof.

For purposes of determining compliance with this Section 7.06, in the event that a proposed Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in the preceding clause (e) and/or one or more of the clauses contained in the definition of "Permitted Investments," or is entitled to be made under Section 7.06(d), the Borrower will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment or Investment (or portion thereof) among such sections and/or one or more of the clauses contained in the definition of "Permitted Investments," in a manner that otherwise complies with this covenant.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or such Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this covenant will be determined in good faith by the Board of Directors of the Borrower.

The Borrower will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except as set forth in the definition of Unrestricted Subsidiary and Section 6.15. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding investments by the Borrower and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the definition of "Investments." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time under this covenant or the definition of "Permitted Investments" and if such Subsidiary otherwise meets the definition of an "Unrestricted Subsidiary."

If the Borrower or a Restricted Subsidiary makes a Restricted Payment which at the time of the making of such Restricted Payment would in the good faith determination of the Borrower be permitted hereunder, such Restricted Payment shall be deemed to have been made in compliance with this Agreement notwithstanding any subsequent adjustments made in good faith to the Borrower's financial statements affecting Consolidated Net Income or Consolidated EBITDA of the Borrower for any period.

For the avoidance of doubt, this covenant shall not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Agreement.

Section 7.07 *Change in Nature of Business*. Engage in any material line of business substantially different from the Permitted Business.

Section 7.08 *Transactions with Affiliates*.

(a) Make any payment to, or sell, lease, assign, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "***Affiliate Transaction***") involving an aggregate consideration in excess of $15,000,000, unless (1) the Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or Restricted Subsidiary with an unrelated Person or, if in the good faith judgment of the Borrower, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view and when such transaction is taken in its entirety; and (2) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $40,000,000, a majority of the Board of Directors of the Borrower have determined in good faith that the criteria set forth in the immediately preceding clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors of the Borrower; and *provided* that any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause (2) of this paragraph if such Affiliate Transaction is approved by a majority of the disinterested directors of the Borrower, if any.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will be permitted under this Section 7.08:

(i) any transaction between or among (i) the Borrower, a Restricted Subsidiary or joint venture or similar entity or (ii) the Borrower and any Person that becomes a Restricted Subsidiary as a result of such transaction (including by way of a merger, consolidation or amalgamation);

(ii) Restricted Payments and Permitted Investments permitted hereunder;

(iii) the payment of reasonable compensation and fees and out of pocket expenses to, and indemnities provided on behalf of (and entering into related agreements with) current or former officers, directors, employees, independent contractors or consultants of the Borrower, any of its direct or indirect parent entities, or any Restricted Subsidiary, as determined in good faith by the Board of Directors of the Borrower or senior management thereof;

(iv) transactions in which the Borrower or any Restricted Subsidiary delivers to the Administrative Agent a letter from an Independent Financial Advisor, stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable, when taken as a whole, to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person on an arm's length basis;

(v) payments or loans (or cancellations of loans) to employees, consultants or independent contractors of the Borrower or any of its direct or indirect parent entities or any Restricted Subsidiary which are approved by the Board of Directors of the Borrower and which are otherwise permitted hereunder, but in any event not to exceed $10,000,000 in the aggregate outstanding at any one time;

(vi) payments made or performance under any agreement as in effect on the Closing Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect in the good faith judgment of the Board of Directors of the Borrower to the holders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date);

(vii) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services (including the Borrower and its Subsidiaries and joint ventures), in each case in the ordinary course of business and otherwise in compliance with the terms hereof that are fair to the Borrower or its Restricted Subsidiaries or are on terms at least as favorable as would reasonably have been entered into at such time with an unaffiliated party;

(viii) the issuance of Equity Interests (other than Disqualified Stock) of the Borrower to any direct or indirect parent entity, any director, officer, employee or consultant of the Borrower, its direct or indirect parent entities or its Subsidiaries or any other Affiliates of the Borrower (other than a Subsidiary) and the granting of registration rights in connection therewith;

(ix) any (i) employment, severance and similar agreements entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, (ii) subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (iii) employee compensation, equity or similar incentive, and other benefit plans or arrangements, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(x) without duplication, Permitted Tax Distributions, (ii) transactions undertaken in good faith (as certified by the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Subsidiaries (and not for the purpose of circumventing any covenant set forth herein and which are not materially adverse to the Administrative Agent or the Lenders) and (iii) tax sharing agreements, tax groupings and other similar arrangements for the payment of taxes or the surrender or reallocation of taxes or tax reliefs among direct and indirect parent companies of the Borrower or among Permitted Holders, the Borrower and its Restricted Subsidiaries; *provided*, for the avoidance of doubt, any payments, transactions, agreements, tax groups or other arrangements under this clause (x) shall comply with Section 7.06(e)(xii);

(xi) any transaction effected in connection with the Transactions;

(xii) (x) the purchase of or investment in debt, equity or other securities of the Borrower or any of its Restricted Subsidiaries in primary issuances on the same terms as are applicable to non-Affiliates so long as not more than 50% of such issuance is to an Affiliate and (y) purchases or other acquisitions (other than from the Borrower or any of its Restricted Subsidiaries) of debt or securities of the Borrower or any of its Restricted Subsidiaries by Affiliates in bona fide secondary transactions and, in the case of each of clauses (x) and (y), payments made to an Affiliate in respect of such securities;

(xiii) [reserved];

(xiv) transactions with a Person that is an Affiliate of the Borrower arising solely because the Borrower or any Restricted Subsidiary owns any Equity Interest in, or controls, such Person;

(xv) any lease or sublease entered into between the Borrower or any Restricted Subsidiary, as lessee or sublessee and any Affiliate of the Borrower, as lessor or sub-lessor, which is approved by the Board of Directors of the Borrower in good faith;

(xvi) pledges of Equity Interests of Unrestricted Subsidiaries;

(xvii) intellectual property licenses entered into in the ordinary course of business or consistent with past practice;

(xviii) any transition services arrangement, supply arrangement or similar arrangements entered into in connection with or in contemplation of the disposition of assets or Equity Interests in any Restricted Subsidiary or Investment permitted by Section 7.05 or entered into with any successor, in each case, that the Borrower determines in good faith is either fair to the Borrower or otherwise on customary terms for such type of arrangements in connection with similar transactions;

(xix) an agreement between a Person and an Affiliate of such Person existing at the time such Person is acquired by, or merged into, the Borrower or a Restricted Subsidiary and not entered into in contemplation of such acquisition or merger; *provided* that such acquisition or merger complied with this covenant; and

(xx) transactions between the Borrower or any Restricted Subsidiary and any other Person that would constitute an Affiliate Transaction solely because a director of such other Person is also a director of the Borrower or any direct or indirect parent of the Borrower.

Section 7.09 *Restrictive Agreements*. Directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to:

(a) pay dividends or make any other distributions on its Capital Stock to the Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Borrower or any of its Restricted Subsidiaries;

(b) make loans or advances to the Borrower or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions in effect (x) to secure the Obligations or (y) on the Closing Date, including, without limitation, pursuant to Indebtedness permitted by Section 7.03(b)(iii);

(ii) the Security Documents and Guarantees;

(iii) Capitalized Lease Obligations, purchase money obligations or other obligations that, in each case, impose restrictions of the nature discussed in clause (c) above in the first paragraph of this covenant on the property so acquired;

(iv) applicable law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person acquired by the Borrower or any Restricted Subsidiary in existence at the time of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

(vi) contracts for the sale of assets (including sale-lease back agreements), including without limitation, customary restrictions with respect to a Subsidiary pursuant to an agreement that has been entered into for the sale or disposition of the Capital Stock or assets of such Subsidiary;

(vii) Secured Indebtedness and Liens otherwise permitted to be incurred pursuant to Sections 7.01 and 7.03 that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or other restrictions on cash or deposits constituting Permitted Liens;

(ix) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(x) customary provisions contained in leases, subleases, licenses, sublicensesor asset sale agreements and other agreements, including with respect to intellectual property and other agreements;

(xi) other Indebtedness or Preferred Stock, in each case, that is incurred subsequent to the Closing Date pursuant to Section 7.03; *provided*, that (A) in the good faith judgment of the Board of Directors of the Borrower, any such encumbrance or restriction contained in such Indebtedness shall not prohibit (except upon a default or event of default thereunder) the making scheduled cash payments hereunder when due or (B) the encumbrances and restrictions in such Indebtedness, Disqualified Stock or Preferred Stock either are not materially more restrictive taken as a whole than those contained hereunder or in the 2026 Senior Secured Notes Indenture as in effect on the Closing Date or generally represent market terms at the time of incurrence or issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries; and

(xii) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) of the first paragraph above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xi) above; provided that the encumbrances or restrictions imposed by such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Board of Directors of the Borrower, not materially more restrictive than encumbrances and restrictions contained in such predecessor agreements and do not affect the Borrower's and the Guarantors' ability, taken as a whole, to make payments of interest and scheduled payments of principal as required hereunder, in each case as and when due.

For purposes of determining compliance with this covenant, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock will not be deemed a restriction on the ability to make distributions on Capital Stock and (2) the subordination of loans or advances made to the Borrower or a Restricted Subsidiary to other Indebtedness incurred by the Borrower or any such Restricted Subsidiary will not be deemed a restriction on the ability to make loans or advances.

Section 7.10 *Use of Proceeds*. Request any Credit Extension, use, or allow any of its Restricted Subsidiaries to use, the proceeds of any Credit Extension, (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 Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of, or with, any Sanctioned Person or in any Sanctioned Country, or (c) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

Section 7.11 *Financial Covenant*. Fail to maintain a maximum Consolidated Leverage Ratio not greater than 5.50:1.00, with a step down to 5.25:1.00 beginning with the fiscal quarter ending March 31, 2023, to be tested, commencing with the first full fiscal quarter after the Closing Date, on the last day of each fiscal quarter on which the aggregate outstanding amount of all extensions of credit under the Revolving Credit Facility and drawn and undrawn letters of credit (excluding (a) letters of credit that have been cash collateralized and (b) letters of credit having an aggregate face amount less than $5,000,000) exceeds 35% of the total commitments under the Revolving Credit Facility.

ARTICLE 8.
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 *Events of Default*. Each of the following shall constitute an Event of Default (each, an "**Event of Default**"):

(a) *Non-Payment*. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants*. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a), 6.04 (with respect to the Borrower's existence) or 6.10, or Article 7 (other than Section 7.11) or (ii) the Borrower fails to perform or observe the covenant contained in Section 7.11; *provided* that a breach of the requirements of Section 7.11 shall not constitute an Event of Default for purposes of any Facility other than the Revolving Credit Facility unless and until the Required Revolving Credit Lenders have terminated the Revolving Credit Commitments and/or demanded repayment of, or otherwise accelerated, the Indebtedness owed to them hereunder; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the Administrative Agent provides written notice to the Borrower of such failure; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect, in any material respect, when made or deemed made; or

(e) *Cross-Default*. (i) The Borrower or any Restricted Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee of Indebtedness (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee of Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, in each case after any applicable grace, cure or notice period, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee of Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee of Indebtedness to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined, or as such comparable term may be used and defined, in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Restricted Subsidiary is the Defaulting Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) or (B) any Termination Event (as defined, or as such comparable term may be used and defined, in such Swap Contract) under such Swap Contract as to which the Borrower or any Restricted Subsidiary is an Affected Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) and, in either event, the Swap Termination Value owed by the Borrower or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) *Insolvency Proceedings*, *Etc*. Any Loan Party or any of its Restricted Subsidiaries (other than an Immaterial Subsidiary) institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts*; *Attachment*. (i) The Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) *Judgments*. There is entered against the Borrower or any Restricted Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA*. (i) An ERISA Event occurs that alone or together with any other ERISA Event that has occurred could reasonably be expected to result in a Material Adverse Effect, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount that could reasonably be expected to result in a Material Adverse Effect; or

(j) *Invalidity of Loan Documents*. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder including the release or termination thereof by the Administrative Agent or the Required Lenders or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) *Change of Control*. There occurs any Change of Control; or

(l) *Security Documents*. Any Security Document after delivery thereof pursuant to Article 4 or Section 6.11 shall for any reason (other than pursuant to the terms hereof) cease to create a valid and perfected first priority Lien on the Collateral purported to be covered thereby.

Section 8.02 *Remedies Upon Event of Default*. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders (or, in the case of Section 8.02(a) (insofar as it relates to the obligations of the Revolving Credit Lenders to make Revolving Credit Loans, the L/C Issuers to make L/C Credit Extensions) and Section 8.02(e) below, in each case, the Required Revolving Credit Lenders), take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to 105% of the then Outstanding Amount thereof);

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or at law or in equity; and

(e) upon the occurrence of an Event of Default under Section 7.11 that is unwaived, (x) terminate the Revolving Credit Commitments and/or (y) take any or all of the actions specified in Section 8.02(a), (b), (c) or (d) in respect of the Revolving Credit Commitments, Revolving Loans, Letters of Credit;

provided, however, that (i) upon the taking of any action by or upon the direction of the Required Revolving Credit Lenders as contemplated by clause (e) above, the Required Lenders may take any of the actions contemplated by clause (a) though (d) above with respect to any Facility hereunder and (ii) upon the occurrence of any Event of Default set forth in Section 8.01(f), the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 *Application of Funds*. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16 and of any Pari Passu Intercreditor Agreement then in effect, be applied by the Administrative Agent in the order specified in Section 6.4 of the Security Agreement.

ARTICLE 9.
AGENCY

Section 9.01 *Appointment and Authority*.

(a) Each of the Lenders and each L/C Issuer hereby irrevocably appoints Barclays Bank PLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Administrative Agent shall also act as the Collateral Agent under the Loan Documents, and each of the Lenders (including in its capacities as a potential Cash Management Bank and potential Hedge Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder (at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 9 and Article 10 (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent under the Loan Documents, as if set forth in full herein with respect thereto; *provided* that to the extent an L/C Issuer is entitled to indemnification under this Section 9.01 solely in connection with its role as an L/C Issuer, only the Revolving Credit Lenders shall be required to indemnify such L/C Issuer in accordance with this Section 9.01. The provisions of this Article 9 shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 9.02 *Rights as a Lender*. Each Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent hereunder, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as such Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 *Exculpatory Provisions*. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and any such duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except (in the case of the Administrative Agent) discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (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 8.02 and 10.01) 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. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until it shall have received written notice from a Lender, an L/C Issuer or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default."

No Agent or any of its Related Parties shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than, in the case of the Administrative Agent, to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 *Reliance*. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 *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 Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as 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 9.06 *Resignation of Administrative Agent*. The Administrative Agent may at any time give notice of its resignation (in both its capacity as Administrative Agent and as Collateral Agent) to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers appoint a successor Administrative Agent and Collateral Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent and Collateral Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent and Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent and Collateral Agent, and the retiring Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent and Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's and Collateral Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent and Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent and Collateral Agent was acting as Administrative Agent or Collateral Agent.

Any resignation by the entity serving as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer (if applicable). Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor may agree to succeed to and become vested with all of the rights, powers, privileges and duties of a retiring L/C Issuer. In connection with any such agreement to succeed to the retiring L/C Issuer, the successor L/C Issuer, if applicable, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of such retiring L/C Issuer with respect to such Letters of Credit.

Notwithstanding the foregoing, the failure of any successor to agree to succeed to a retiring L/C Issuer shall not affect the resignation of such retiring L/C Issuer. The retiring L/C Issuer shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)), but shall have no obligation to issue any additional Letters of Credit or to amend, extend or otherwise modify any existing Letters of Credit (except as required pursuant to the terms of any such existing Letters of Credit).

Section 9.07 *Non-Reliance on Administrative Agent and Other Lenders*. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own 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.

Section 9.08 *No Other Duties, Etc.* Anything herein to the contrary notwithstanding, none of the Arrangers or the Agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

Section 9.09 *Administrative Agent May File Proofs of Claim*. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relating to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

Section 9.10 *Collateral and Guaranty Matters*. Each Lender (including in its capacities as a potential Cash Management Bank and as a potential Hedge Bank) and L/C Issuer irrevocably authorizes the Administrative Agent, at its option and in its discretion, after the Closing Date:

(a) To direct the Collateral Agent to release any Lien to the extent securing the Obligations on any property granted to or held by the Collateral Agent under any Loan Document (i), upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements), the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made) and the termination and payment in full of all obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements in respect of which the Administrative Agent has received notice pursuant to Section 9.11 (other than any such agreements as to which other arrangements reasonably satisfactory to the applicable Cash Management Bank or Hedge Bank have been made), (ii) that is Disposed of in a transaction permitted hereunder the result of which is that, following the consummation thereof, no Loan Party has rights in the property being Disposed of or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(b) to release any Guarantor from its Guarantee of the Obligations under the Security Agreement (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements), the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made) and the termination and payment in full of all obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements in respect of which the Administrative Agent has received notice pursuant to Section 9.11 (other than any such agreements as to which other arrangements reasonably satisfactory to the applicable Cash Management Bank or Hedge Bank have been made), or (ii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(c) to release any Guarantor from its Guarantee of the Obligations and all Liens granted by any such Guarantor, and all pledges of Equity Interests in any such Guarantor under the Security Agreement if such Person ceases to be a Restricted Subsidiary for a legitimate business purpose (including by being designated an Unrestricted Subsidiary in accordance with Section 6.17 hereof, or by way of liquidation, merger, consolidation, amalgamation or dissolution or Disposition thereof as permitted by this Agreement), or becomes an Immaterial Subsidiary or an Excluded Subsidiary (unless such Person continues to guarantee any of the 2026 Senior Secured Notes or any refinancing thereof), in each case, effected for a legitimate business purpose;

(d) to execute any intercreditor agreements and/or subordination agreements with any holder of any Indebtedness or Liens permitted by this Agreement to the extent such intercreditor agreement and/or subordination agreement is required by the terms hereof; and

(e) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document, to the extent securing the Obligations, to the holder of any Lien on such property that is permitted by Section 7.03(b)(xxxiii).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its (or the Collateral Agent's) interest in particular types or items of Collateral, or to release any Guarantor from its Guarantee of the Obligations under the Security Agreement pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (or will direct the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its Guarantee of the Obligations under the Security Agreement, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Notwithstanding anything to the contrary in this Agreement, upon a Subsidiary being designated an Unrestricted Subsidiary in accordance with Section 6.17 of this Agreement or otherwise ceasing to be a Restricted Subsidiary (including by way of liquidation, merger, consolidation or amalgamation or dissolution) in a transaction permitted by this Agreement and effected for a legitimate business purpose, such Subsidiary shall be automatically released and relieved of any obligations under this Agreement, the Security Agreement and all other Loan Documents, all Liens granted by such Subsidiary in its assets to the Collateral Agent shall be automatically released, all pledges to the Collateral Agent of Equity Interests in any such Subsidiary shall be automatically released, and the Administrative Agent and Collateral Agent is authorized to, and shall promptly, deliver to the Borrower any acknowledgement confirming such releases and all necessary releases and terminations, in each case as the Borrower may reasonably request to evidence such release and at Borrower's expense. To the extent any Loan Document conflicts or is inconsistent with the terms of this Section, this Section shall govern and control in all respects.

Section 9.11 *Additional Secured Parties*. No Cash Management Bank or Hedge Bank that obtains the benefits of the Security Agreement or any Collateral by virtue of the provisions hereof or of the Security Agreement, the Guarantee Agreement or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 9 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 9.12 *Certain ERISA Matters*.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited 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 so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent or any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

ARTICLE 10.
MISCELLANEOUS

Section 10.01 *Amendments, Etc.* Except as set forth below in this Section 10.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent (or signed by the Administrative Agent on behalf of and with the written consent of the Required Lenders), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however,* that (i) any term or provision of Section 7.11, the definition of "Consolidated Leverage Ratio" (or any of their respective component definitions (as used solely in such Section but not as used in other Sections of this Agreement)) may be amended, waived, consented to or otherwise modified with the consent of the Required Revolving Credit Lenders (and no other consents from any other Lenders or group thereof shall be necessary); and (ii) no such amendment, waiver, consent or other modification shall:

(a) waive any condition set forth in Section 4.01 without the written consent of each Lender adversely affected thereby;

(b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of the Required Revolving Credit Lenders;

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 2.06 or Section 8.02) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments pursuant to Section 2.05(b)) of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender directly affected thereby;

(e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however,* that only the consent of the Required Lenders shall be necessary to amend (i) the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate and (ii) except as set forth in clause (i) of the first proviso to this Section 10.01, any financial ratio (including any defined term used therein) or any definition relating to any (x) financial calculation or (y) currency exchange rate calculation affecting compliance with Sections 7.01, 7.02 and 7.03 with respect to the amount of Liens, Investments, or Indebtedness in currencies other than U.S. Dollars hereunder even if, in the case of clause (x) and (y), the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(f) change (i) Section 8.03 of this Agreement or Section 6.4 of the Security Agreement in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the definition of "Applicable Percentage," the definition of "Applicable Revolving Credit Percentage", the order of application or pro rata nature of application of any reduction in the Commitments or any prepayment of Loans within or among the Facilities from the application thereof set forth in the applicable provisions of Sections 2.05(a), 2.05(b) or 2.06(c), or other provisions in respect of the pro rata application of payments or offers hereunder under Section 2.12, 2.13, 2.14, 2.15, 2.16 or 10.06(b)(vii) in any manner that materially and adversely affects the Lenders under a Facility or Class without the written consent of the Lenders with respect to the relevant Facility or Class and adversely affected thereby;

(g) change (i) any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(g)), without the written consent of each Lender; (ii) the definition of "Required Lenders", "Required Facility Lenders" or "Required Revolving Credit Lenders" without the written consent of each Lender under the applicable Facility or (iii) any other provision of this Agreement or the other Loan Documents in a manner that creates a materially disadvantaged Class or otherwise materially adversely affects a Class, without the written consent of the Required Lenders with respect to such Class determined in a manner consistent with the definition of "Required Facility Lenders" (as if such Class constituted a Facility for purposes of such definition);

(h) release all or substantially all of the value of the Guarantees of the Obligations in any transaction or series of transactions without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(i) release all or substantially all of the Collateral in any transaction or series of related transactions without the written consent of each Lender, except to the extent the release of any Collateral is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of the Required Facility Lenders with respect to the relevant Facility;

(k) amend the definition of "Alternative Currency" without the written consent of each L/C Issuer;

(l) amend clause (x) of Section 10.06(a) without the written consent of each Lender; or

(m) subordinate the payment priority of the Obligations or subordinate the Liens securing the Obligations, except as expressly contemplated by Section 9.10, without the written consent of each Appropriate Lender directly affected thereby;

and, *provided*, *further*, that (i) no amendment, waiver, consent or modification shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document, in each case, relating to any Letter of Credit issued or to be issued by it, (ii) [reserved], (iii) no amendment, waiver, consent or modification shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document and (iv) the Agency Fee Letter may be amended, and rights or privileges thereunder may be waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary contained herein, if, following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document if the same is not objected to in writing by the Required Lenders within three Business Days following receipt of notice thereof. It is understood that posting such amendment electronically on IntraLinks/IntraAgency, SyndTrak or another relevant website with notice of such posting by the Administrative Agent to the Required Lenders shall be deemed adequate receipt of notice thereof.

Section 10.02 *Notices; Effectiveness; Electronic Communication*.

(a) *Notices Generally*. Except as provided in Section 10.02(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to the Borrower, the Administrative Agent, Collateral Agent, any L/C Issuer party hereto on the Closing Date, to the address, facsimile number, or electronic mail address specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, or electronic mail address specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(b) shall be effective as provided in such Section 10.02(b).

(b) *Electronic Communications*. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article 2 if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *The Platform*. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however,* that in no event shall any Agent Party have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address*, *Etc*. Each of the Borrower, the Administrative Agent, the Collateral Agent, the L/C Issuers may change its address or facsimile for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address or facsimile for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuers. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain MNPI with respect to the Borrower or any of its Subsidiaries or their respective securities for purposes of United States Federal or state securities laws.

(e) *Reliance by Administrative Agent, L/C Issuers and Lenders*. The Administrative Agent, the Collateral Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, the L/C Issuers, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower except to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereby consents to such recording.

Section 10.03 *No Waiver; Cumulative Remedies; Enforcement*. No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers and, in respect of the Security Documents, any other Secured Party; *provided, however,* that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or Collateral Agent) hereunder and under the other Loan Documents, (b) each of the L/C Issuers from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Secured Party from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law and *provided, further,* that if at any time there is no Person acting as Administrative Agent or Collateral Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent and Collateral Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c), and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 *Expenses; Indemnity; Damage Waiver*.

(a) *Costs and Expenses*. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Arranger, the Administrative Agent, the Collateral Agent and their respective Affiliates, including but not limited to expenses associated with the syndication of the Facilities, due diligence efforts, the reasonable fees, charges and disbursements of counsel, limited to a single counsel and, in each relevant jurisdiction, a single local counsel and one additional local counsel in each applicable jurisdiction for any such person in the event of a conflict of interest, (including, without limitation, reasonable and actual travel expenses), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, performance and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Arranger, Administrative Agent, the Collateral Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for the Arranger, the Administrative Agent, the Collateral Agent, the Lenders and the L/C Issuers (but limited to the fees, disbursements, and other charges of a single law firm for the Arranger, the Administrative Agent, the Collateral Agent, the Lenders and the L/C Issuers and, in each relevant jurisdiction, a single local counsel, in each case, representing the Administrative Agent, the Collateral Agent all Lenders and all L/C Issuers, and one additional counsel or local counsel, as applicable, in each applicable jurisdiction for any such person in the event of a conflict of interest)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) *Indemnification*. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), each Lender and each L/C Issuer and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any external counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the Transactions and the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof) and their respective Related Parties only, the administration of this Agreement and the other Loan Documents (except for any Taxes (which shall be governed by Section 3.01), other than any Taxes that represent losses, claims or damages arising from any non-Tax claim), (ii) any Loan or Letter of Credit or the use or intended use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on, through, under or from any property currently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries, or any Environmental Claim or Environmental Liability related in any way to any of the Loan Parties or any of their respective Restricted Subsidiaries or (iv) any claim, litigation, investigation, inquiry or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a Lender, a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto (collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or (y) any proceedings between or among Indemnitees (other than any claims against an Indemnitee in its capacity as Administrative Agent, Collateral Agent, Arranger, or similar role under any Facility) that does not involve any act or omission of the Borrower or any of its Subsidiaries.

(c) *Reimbursement by Lenders*. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (and any sub-agent thereof) any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (and any sub-agent thereof), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Collateral Agent (and any sub-agent thereof) or such L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Collateral Agent (and any sub-agent thereof) or such L/C Issuer in connection with such capacity; *provided* that in respect of the proviso in sub-clause (b) above, it is understood and agreed that any action taken by the Administrative Agent (and any sub-agent thereof) or the Collateral Agent (and any sub-agent thereof) and/or any of their respective Related Parties in accordance with the directions of the Required Lenders or any other appropriate group of Lenders pursuant to Section 10.01 shall not be deemed to constitute gross negligence or willful misconduct for purposes of such proviso. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(e).

(d) *Waiver of Consequential Damages*, *Etc*. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) *Payments*. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival*. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent and any L/C Issuer, the replacement of the Administrative Agent, any Lender or any L/C Issuer, the termination of the Aggregate Commitments, the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

Section 10.05 *Payments Set Aside*. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender and L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 10.06 *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (x) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and (y) no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees and the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts*.

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans (including such Lender's participations in L/C Obligations) of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 (and whole multiples of $1,000,000 in excess thereof), in the case of any assignment in respect of the Revolving Credit Facility, or $1,000,000 (and whole multiples of $1,000,000 in excess thereof), in the case of any assignment in respect of the Term Loans, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents, (such consent is not to be unreasonably withheld or delayed); *provided, further*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) *Proportionate Amounts*. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof in the case of assignments of any Term Loans and ten Business Days after having received notice thereof in the case of assignments of the Revolving Credit Facility;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuers (each such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Credit Facility.

(iv) *Assignment and Assumption*. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however,* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) *No Assignment to Certain Persons*. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, except as provided below in clause (vii) or (B) to a Defaulting Lender, a Disqualified Lender or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) *No Assignment to Natural Persons*. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) *Borrower Purchases*. Notwithstanding anything to the contrary contained in this Section 10.06 or any other provision of this Agreement, if the Borrower has incurred Term Loans hereunder so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may repurchase outstanding Term Loans of any Facility on the following basis:

(A) the Borrower may conduct one or more auctions (each, an "**Auction**") to repurchase all or any portion of the applicable Term Loans of a given Class (such Term Loans, the "**Offer Loans**") of Term Lenders; *provided* that (1) the Borrower delivers to the Administrative Agent (for distribution to all Lenders holding Term Loans of such Class) a notice of the aggregate principal amount of the Offer Loans that will be subject to such Auction no later than 12:00 p.m. at least five Business Days (or such shorter period as may be agreed to by the Administrative Agent) in advance of a proposed consummation date of such Auction indicating (a) the date on which the Auction will conclude, (b) the maximum principal amount of the Offer Loans the Borrower is willing to purchase in the Auction and (c) the range of discounts to par at which the Borrower would be willing to repurchase the Offer Loans; (2) the minimum dollar amount of the Auction shall be no less than $10,000,000 or whole multiples of $1,000,000 in excess thereof; (3) the Borrower shall hold the Auction open for a minimum period of three Business Days; (4) a Lender who elects to participate in the Auction may choose to tender all or part of such Lender's Offer Loans; (5) the Auction shall be made to the Lenders holding the Offer Loans (and purchases of Offer Loans held by Lenders who elect to participate shall be made by the Borrower) on a pro rata basis in accordance with the respective principal amount then due and owing to the applicable Term Lenders; and (6) the Auction shall be conducted pursuant to such procedures as the Administrative Agent may establish which are consistent with this Section 10.06 and are reasonably acceptable to the Borrower, which procedures must be followed by a Lender in order to have its Offer Loans repurchased;

(B) with respect to all repurchases made pursuant to this Section 10.06, (1) the Borrower shall pay to the applicable selling Lender all accrued and unpaid interest, if any, on the repurchased Offer Loans to the date of repurchase of such Offer Loans, (2) such repurchases shall not be deemed to be optional prepayments pursuant to Section 2.05(a), (3) the amount of the Loans so repurchased shall be applied on a pro rata basis to reduce the scheduled remaining installments of principal on the Offer Loans, and (4) the purchase consideration for such Auction shall in no event be funded with the proceeds of Revolving Credit Loans; and

(C) following a repurchase pursuant to this Section 10.06, the Offer Loans so repurchased shall, without further action by any Person, be deemed cancelled for all purposes and no longer outstanding (and may not be resold) for all purposes of this Agreement and all the other Loan Documents, including, but not limited to (1) the making of, or the application of, any payments to the Lenders under this Agreement or any other Loan Document, (2) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Loan Document or (3) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Loan Document. In connection with any Term Loans repurchased and cancelled pursuant to this Section 10.06, the Administrative Agent is authorized to make appropriate entries in the Register to reflect any such cancellation.

(viii) *Certain Additional Payments*. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording in the Register thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) *Register*. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon its receipt of a duly completed and executed Assignment and Assumption, the Administrative Agent shall record the information contained therein in the Register. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's entry), at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Borrower, any L/C Issuer or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or Loans (including such Lender's participations in L/C Obligations) 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 Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (ii) of the first proviso to Section 10.01 requiring the consent of each Lender affected thereby and that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; *provided*, *further* that such agreement or instrument shall provide that the Participant understands that the value of the loan asset (including Participant's pro rata share thereof) may increase or decrease based on fluctuations in currency exchange rates and agrees that any losses (gains) experienced as a result of changes in currency exchange rates shall be shared by such Participant in accordance with the Participant's pro rata share. To the extent permitted by law, each Participant shall also be entitled to the benefits of Section 10.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as 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 (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. 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.

(e) *Limitations upon Participant Rights*. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent or 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 be entitled to the benefits of Section 3.01 if such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender (*provided* that all forms required under Section 3.01(e) shall instead be delivered to the applicable Lender).

(f) *Certain Pledges*. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Resignation as L/C Issuer after Assignment*. Notwithstanding anything to the contrary contained herein, if at any time a Lender serving as an L/C Issuer assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to subsection (b) above, such Lender may, upon 30 days' notice to the Borrower and the other Lenders, resign as an L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Revolving Credit Lenders a successor L/C Issuer hereunder if such Revolving Credit Lender is willing to act in such capacity; *provided, however,* that no failure by the Borrower to appoint any such successor shall affect the resignation of the retiring entity as L/C Issuer. If any entity serving as L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer and the acceptance of such appointment by such successor, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

(h) Disqualified Lenders.

(i) No assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the "**Trade Date**") on which the assigning or transferring Lender entered into a binding agreement to sell and assign, or grant a participation in, all or a portion of its rights and obligations under this Agreement, as applicable, to such Person. For the avoidance of doubt, no assignment or participation shall be retroactively invalidated pursuant to this Section 10.06(h) if the Trade Date therefor occurred prior to the assignee's or participant's becoming a Disqualified Lender.

(ii) The Administrative Agent and each assignor of a Loan or Commitment or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in the relevant Assignment and Assumption or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Lender. The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Lenders to each Lender upon request. Subject to Section 10.06(h)(iii), any assignment by a Lender to a Disqualified Lender in violation of this Section 10.06(h) shall be treated for purposes of this Agreement as a sale by such Lender of a participation of such rights and obligations in accordance with Section 10.06(d), *provided* that such treatment shall not relieve any assigning Lender from any liabilities arising as a consequence of its breach of this Agreement.

(iii) If any assignment or participation is made to any Disqualified Lender without the Borrower's prior written consent in violation of clause (i) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such Revolving Credit Commitment or in accordance with and subject to the provisions of Section 10.13, require such Disqualified Lender to assign and delegate all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 or Section 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee as if such Disqualified Lender were required to do so pursuant to Section 10.13, (B) in the case of Term Loans held by a Disqualified Lender, purchase or prepay such Term Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Term Loans and or (C) in the case of Term Loans, require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 10.06) all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees that agrees to such assignment in writing at a price equal to the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations.

(iv) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (1) will not have the right to (x) receive information, reports or other materials provided to the Administrative Agent or the Lenders by the Borrower or any of its Subsidiaries, the Administrative Agent or any other Lender, (y) attend or participate (including by telephone) in meetings attended by any of the Lenders and/or the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (2) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented to such matter in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter; *provided, however,* that any Disqualified Lender's consent shall be required for any amendment, waiver or other modification described in clause (c) of Section 10.01 with respect to any increase to the Commitments of such Disqualified Lender, and (y) for purposes of voting on any plan of reorganization pursuant to Section 1126 of the Bankruptcy Code of the United States or any similar plan or proposal under any other Debtor Relief Law with respect to the Borrower or any of its Subsidiaries, each Disqualified Lender hereby agrees (1) not to vote on such plan, (2) if such Disqualified Lender does vote on such plan notwithstanding the restriction in the immediately foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code of the United States (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights, including any Debtor Relief Law), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code of the United States (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights including any Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(v) Notwithstanding anything to the contrary in this Agreement, the Loan Parties and the Lenders acknowledge and agree that in no event shall the Administrative Agent or any of its Affiliates or Related Parties be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Section 10.07 *Treatment of Certain Information; Confidentiality*. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), in which case each of the Administrative Agent, the Lenders and the L/C Issuers agrees to inform the Borrower promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation, as applicable (except with respect to any audit or examination conducted by bank accountants or any governmental or regulatory authority exercising examination or regulatory authority over the Administrative Agent, such Lender or such L/C Issuer) and to use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment, (c) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process or to the extent required by applicable laws or regulations or by any subpoena or similar legal process, in which case each of the Administrative Agent, the Lenders and the L/C Issuers agrees to inform the Borrower promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation, as applicable (except with respect to any audit or examination conducted by bank accountants or any governmental or regulatory authority exercising examination or regulatory authority over the Administrative Agent, such Lender or such L/C Issuer) and to use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Restricted Subsidiaries or any Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to any Facility or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (z) is independently developed by the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates without reliance on any confidential Information of the Borrower and its Subsidiaries. In addition, each of the Administrative Agent, the Lenders and the L/C Issuers may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the Lenders and the L/C Issuers in connection with the administration of this Agreement, the other Loan Documents and the Credit Extensions.

Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include MNPI concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of MNPI and (c) it will handle such MNPI in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.08 *Right of Setoff*. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to all other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have under applicable Law or otherwise. Each Lender and L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09 *Interest Rate Limitation*. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the unpaid principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or any Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude optional prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10 *Counterparts; Integration; Effectiveness*. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the Agency Fee Letter and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11 *Survival of Representations and Warranties*. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, each Lender and each L/C Issuer, regardless of any investigation made by the Administrative Agent, any Lender or any L/C Issuer or on their behalf and notwithstanding that the Administrative Agent, any Lender or any L/C Issuer may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, any Commitment remains in effect or any Letter of Credit shall remain outstanding.

Section 10.12 *Severability*. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, then, to the fullest extent permitted by law, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or any L/C Issuer, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.13 *Replacement of Lenders*. If any Lender requests compensation under Section 3.04, 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 3.01, or if any Lender shall have not consented to any proposed amendment, modification, termination, waiver or consent requiring the consent of all Lenders or all affected Lenders as contemplated by Section 10.01 and the consent of the Required Lenders, the Required Revolving Credit Lenders or the Required Facility Lenders, as applicable, has been obtained, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and Section 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, L/C Advances accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal, L/C Advances and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Lender becoming a non-consenting Lender, the applicable assignee shall have consented to the applicable amendment, modification, termination, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender and L/C Issuer hereby agrees and acknowledges that, with regard to any Assignment and Assumption necessary to effectuate any assignment of such Lender's or L/C Issuer's interests hereunder in the circumstances contemplated by this Section 10.13, consent to such Assignment and Assumption shall have been deemed to have been given if such Lender or L/C Issuer has not responded within one Business Day of a request for such consent.

Section 10.14 *Governing Law; Jurisdiction; Etc.*

(a) Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE IN ANY WAY HERETO OR THERETO OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF OR THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, UNLESS OTHERWISE EXPRESSLY SET FORTH THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) Submission to Jurisdiction. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) Waiver of Venue. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.15 *Waiver of Jury Trial*. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.16 *[Reserved]*.

Section 10.17 *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Agents and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Agents and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither any Agent nor any Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Agents and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither any Agent nor any of the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the each of the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.18 *Electronic Execution of Assignments and Certain Other Documents*. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other borrowing requests, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.19 *USA PATRIOT Act*. Each Lender and each L/C Issuer that is subject to the Act and the Administrative Agent (for itself and not on behalf of any Lender or L/C Issuer) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**") and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower and each Guarantor, which information includes the name, tax identification number and address of the Borrower and each Guarantor and other information that will allow such Lender or L/C Issuer or the Administrative Agent, as applicable, to identify the Borrower and each Guarantor in accordance with the Act and the Beneficial Ownership Regulation. The Borrower shall, and shall cause each Guarantor to, promptly following a request by the Administrative Agent or any Lender or L/C Issuer, provide all documentation and other information that the Administrative Agent or L/C Issuer or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

Section 10.20 *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. The provisions of this Section 10.20 shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 10.21 *Pari Passu Intercreditor Agreement*. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (i) the Liens granted to the Administrative Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Pari Passu Intercreditor Agreement (if in effect), (ii) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the Pari Passu Intercreditor Agreement, on the other hand, the terms and provisions of the Pari Passu Intercreditor Agreement shall control and (iii) each Lender and L/C Issuer (A) authorizes the Administrative Agent to execute the Pari Passu Intercreditor Agreement on behalf of such Lender and L/C Issuer, and (B) agrees to be bound by the terms of the Pari Passu Intercreditor Agreement and agrees that any action taken by the Administrative Agent under the Pari Passu Intercreditor Agreement shall be binding upon such Lender and L/C Issuer.

Section 10.22 *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 Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other 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 10.23 *Acknowledgement Regarding Any Supported QFCs*. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts 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):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the 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; and

(b) As used in this Section 10.23, the following terms have the following meanings:

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

"**Covered Entity**" means any of the following:

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

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

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

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

"**QFC**" has the meaning specified in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Remainder of page intentionally left blank]

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

TURNING POINT BRANDS, INC.

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Credit Agreement]

BARCLAYS BANK PLC, as Administrative
Agent, an L/C Issuer and a Revolving Credit Lender

By: /s/ Christopher M. Aitkin

Name: Christopher M. Aitkin
Title: Vice President

[Signature Page to Credit Agreement]

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as an L/C Issuer and a Revolving Credit Lender

By: /s/ Mary-Alicha Weldon

Name: Mary-Alicha Weldon
Title: Sr. Vice President

[Signature Page to Credit Agreement]

REGIONS BANK, as an L/C Issuer and a Revolving Credit Lender

By: /s/ Matthew N. Walt

Name: Matthew N. Walt
Title: Director

[Signature Page to Credit Agreement]

Exhibit 10.2

Execution Version

FIRST LIEN PARI PASSU INTERCREDITOR AGREEMENT

dated as of

February 11, 2021

among

Barclays Bank PLC,
as Initial First Lien Representative and Initial First Lien Collateral Agent,

GLAS Trust Company LLC,
as the Initial Other Representative,

GLAS Trust Company LLC,
as the Initial Other Collateral Agent,

and

each additional Representative and Collateral Agent from time to time party hereto

and acknowledged and agreed to by

Turning Point Brands, Inc.,

as the Company and the other Grantors referred to herein

TABLE OF CONTENTS

EXHIBITS

This **FIRST LIEN PARI PASSU INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "***Agreement***") dated as of February 11, 2021, among Barclays Bank PLC, as administrative agent for the Initial Credit Agreement Claimholders (in such capacity and together with its successors from time to time in such capacity, the "***Initial First Lien Representative***") and as collateral agent for the Initial Credit Agreement Claimholders (in such capacity and together with its successors from time to time in such capacity, the "***Initial First Lien Collateral Agent***"), GLAS Trust Company LLC, as Representative for the Initial Other First Lien Claimholders (in such capacity and together with its successors from time to time in such capacity, the "***Initial Other Representative***"), GLAS Trust Company LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, as collateral agent for the Initial Other First Lien Claimholders (in such capacity and together with its successors from time to time in such capacity, the "***Initial Other Collateral Agent***"), and each additional Representative and Collateral Agent from time to time party hereto for the Other First Lien Claimholders of the Series with respect to which it is acting in such capacity, and acknowledged and agreed to by Turning Point Brands, Inc. (the "***Company***") and the other Grantors. Capitalized terms used in this Agreement have the meanings assigned to them in Article 1 below.

Reference is made to (i) the Credit Agreement dated as of February 11, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "***Initial Credit Agreement***"), among the Company, each Subsidiary of the Company party thereto from time to time, the Lenders party thereto from time to time, the Initial First Lien Representative, the Initial First Lien Collateral Agent and the other parties named therein, (ii) the Guarantee Agreement dated as of February 11, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "***Guarantee Agreement***"), among the Company, each Subsidiary of the Company party thereto from time to time, the Credit Agreement Collateral Agent and (iii) the Indenture dated as of February 11, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "***Indenture***"), among the Company, each Subsidiary of the Company party thereto from time to time, the Initial Other Representative and the Initial First Lien Collateral Agent.

Pursuant to the Guarantee Agreement and the Indenture, the Company has agreed to cause certain current and future Subsidiaries to agree to guaranty the Initial Credit Agreement Obligations pursuant to a Subsidiary Guaranty (the "***Subsidiary Guaranty***");

The obligations of the Company under the Initial Credit Agreement, the obligations of the Company under any Initial Credit Agreement Hedge Agreements and any Initial Credit Agreement Cash Management Agreements, and the obligations of the Subsidiary guarantors under the Subsidiary Guaranty will be secured on a first-priority basis by liens on substantially all the assets of the Company and the Subsidiary guarantors (such current and future Subsidiaries of the Company providing a guaranty thereof), respectively, pursuant to the terms of the Initial Credit Agreement Collateral Documents;

The Initial Credit Agreement Documents and the Initial Other First Lien Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral; and

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, each of the Initial First Lien Representative (for itself and on behalf of each other Initial Credit Agreement Claimholder), the Initial First Lien Collateral Agent (for itself and on behalf of each other Initial Credit Agreement Claimholder), the Initial Other Representative (for itself and on behalf of each other Initial Other First Lien Claimholder), the Initial Other Collateral Agent (for itself and on behalf of each other Initial Other First Lien Claimholder) and each Additional First Lien Representative and Additional First Lien Collateral Agent (in each case, for itself and on behalf of the Additional First Lien Claimholders of the applicable Series), intending to be legally bound, hereby agrees as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.1 Certain Defined Terms.

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Initial Credit Agreement (whether or not then in effect), and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC shall have the meaning specified in Article 9 thereof): Certificated Security, Commodity Account, Commodity Contract, Deposit Account, Electronic Chattel Paper, Promissory Note, Instrument, Letter of Credit Right, Securities Entitlement, Securities Account and Tangible Chattel Paper. As used in this Agreement, the following terms have the meanings specified below:

"***Additional First Lien Claimholders***" has the meaning set forth in Section 5.14.

"***Additional First Lien Collateral Agent***" means with respect to each Series of Other First Lien Obligations and each Replacement Credit Agreement, in each case, that becomes subject to the terms of this Agreement after the date hereof, the Person serving as collateral agent (or the equivalent) for such Series of Other First Lien Obligations or Replacement Credit Agreement and named as such in the applicable Joinder Agreement delivered pursuant to Section 5.14 hereof, together with its successors from time to time in such capacity. If an Additional First Lien Collateral Agent is the Collateral Agent under a Replacement Credit Agreement, it shall also be a Replacement Collateral Agent and the Credit Agreement Collateral Agent, otherwise it shall be an Other First Lien Collateral Agent.

"***Additional First Lien Debt***" has the meaning set forth in Section 5.14.

"***Additional First Lien Representative***" means with respect to each Series of Other First Lien Obligations and each Replacement Credit Agreement, in each case, that becomes subject to the terms of this Agreement after the date hereof, the Person serving as administrative agent, trustee or in a similar capacity for such Series of Other First Lien Obligations or Replacement Credit Agreement and named as such in the applicable Joinder Agreement delivered pursuant to Section 5.14 hereof, together with its successors from time to time in such capacity. If an Additional First Lien Representative is the Representative under a Replacement Credit Agreement, it shall also be a Replacement Representative and the Credit Agreement Representative, otherwise it shall be an Other First Lien Representative.

"***Agreement***" has the meaning set forth in the introductory paragraph hereto.

"***Applicable Collateral Agent***" means (i) until the earlier of (x) the Discharge of Credit Agreement and (y) the Non-Controlling Representative Enforcement Date, the Credit Agreement Collateral Agent and (ii) from and after the earlier of (x) the Discharge of Credit Agreement and (y) the Non-Controlling Representative Enforcement Date, the Collateral Agent for the Series of First Lien Obligations represented by the Major Non-Controlling Representative.

"***Applicable Representative***" means (i) until the earlier of (x) the Discharge of Credit Agreement and (y) the Non-Controlling Representative Enforcement Date, the Credit Agreement Representative and (ii) from and after the earlier of (x) the Discharge of Credit Agreement and (y) the Non-Controlling Representative Enforcement Date, the Major Non-Controlling Representative.

"***Bankruptcy Case***" has the meaning set forth in Section 2.5(b).

"***Bankruptcy Code***" means Title 11 of the United States Code, as amended.

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

*"**Business Day**"* means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"***Collateral***" means all assets and properties subject to, or purported to be subject to, Liens created pursuant to any First Lien Collateral Document to secure one or more Series of First Lien Obligations and shall include any property or assets subject to replacement Liens or adequate protection Liens in favor of any First Lien Claimholder.

"***Collateral Agent***" means (i) in the case of any Credit Agreement Obligations, the Credit Agreement Collateral Agent (which in the case of the Initial Credit Agreement Obligations shall be the Initial First Lien Collateral Agent and in the case of any Replacement Credit Agreement shall be the Replacement Collateral Agent) and (ii) in the case of the Other First Lien Obligations, the Other First Lien Collateral Agent (which in the case of the Initial Other First Lien Obligations shall be the Initial Other Collateral Agent and in the case of any other Series of Other First Lien Obligations shall be the Additional First Lien Collateral Agent for such Series).

*"**Company**"* has the meaning set forth in the introductory paragraph to this Agreement.

"***Control Collateral***" means any Shared Collateral in the "control" (within the meaning of Section 9-104, 9-105, 9-106, 9-107 or 8-106 of the Uniform Commercial Code of any applicable jurisdiction) of any Collateral Agent (or its agents or bailees), to the extent that control thereof perfects a Lien thereon under the Uniform Commercial Code of any applicable jurisdiction. Control Collateral includes any Deposit Accounts, Securities Accounts, Securities Entitlements, Commodity Accounts, Commodity Contracts, Letter of Credit Rights or Electronic Chattel Paper over which any Collateral Agent has "control" under the applicable Uniform Commercial Code.

"***Controlling Claimholders***" means (i) at any time when the Credit Agreement Collateral Agent is the Applicable Collateral Agent, the Credit Agreement Claimholders and (ii) at any other time, the Series of First Lien Claimholders whose Collateral Agent is the Applicable Collateral Agent.

"Credit Agreement" means (i) the Initial Credit Agreement and (ii) each Replacement Credit Agreement.

"Credit Agreement Claimholders" means (i) the Initial Credit Agreement Claimholders and (ii) the Replacement Credit Agreement Claimholders.

"Credit Agreement Collateral Agent" means (i) the Initial First Lien Collateral Agent and (ii) the Replacement Collateral Agent under any Replacement Credit Agreement.

"Credit Agreement Collateral Documents" means (i) the Initial Credit Agreement Collateral Documents and (ii) the Replacement Credit Agreement Collateral Documents.

"Credit Agreement Documents" means (i) the Initial Credit Agreement Documents and (ii) the Replacement Credit Agreement Documents.

"Credit Agreement Obligations" means (i) the Initial Credit Agreement Obligations and (ii) the Replacement Credit Agreement Obligations.

"Credit Agreement Representative" means (i) the Initial First Lien Representative and (ii) the Replacement Representative under any Replacement Credit Agreement.

"***Declined Liens***" has the meaning set forth in Section 2.11.

"***Default***" means a "Default" (or similarly defined term) as defined in any First Lien Credit Document.

"***Designation***" means a designation of Additional First Lien Debt and, if applicable, the designation of a Replacement Credit Agreement, in each case, in substantially the form of Exhibit B attached hereto.

"***DIP Financing***" has the meaning set forth in Section 2.5(b).

"***DIP Financing Liens***" has the meaning set forth in Section 2.5(b).

"***DIP Lenders***" has the meaning set forth in Section 2.5(b).

"***Discharge***" means, with respect to any Series of First Lien Obligations, that such Series of First Lien Obligations is no longer secured by, and no longer required to be secured by, any Shared Collateral pursuant to the terms of the applicable First Lien Documents for such Series of First Lien Obligations. The term "***Discharged***" shall have a corresponding meaning.

"***Discharge of Credit Agreement***" means, except to the extent otherwise provided in Section 2.6, the Discharge of the Credit Agreement Obligations; provided that the Discharge of Credit Agreement shall be deemed not to have occurred if a Replacement Credit Agreement is entered into until, subject to Section 2.6, the Replacement Credit Agreement Obligations shall have been Discharged.

"***Equity Release Proceeds***" has the meaning set forth in Section 2.4(a).

"***Event of Default***" means an "Event of Default" (or similarly defined term) as defined in any First Lien Credit Document.

"***First Lien Claimholders***" means (i) the Credit Agreement Claimholders and (ii) the Other First Lien Claimholders with respect to each Series of Other First Lien Obligations.

"***First Lien Collateral Documents***" means, collectively, (i) the Credit Agreement Collateral Documents and (ii) the Other First Lien Collateral Documents.

"***First Lien Documents***" means (i) the Credit Agreement Documents, (ii) the Initial Other First Lien Documents and (iii) each other Other First Lien Document.

"***First Lien Obligations***" means, collectively, (i) the Credit Agreement Obligations and (ii) each Series of Other First Lien Obligations.

"***Grantors***" means the Company and each Subsidiary of the Company which has granted a security interest pursuant to any First Lien Collateral Document to secure any Series of First Lien Obligations.

"***Impairment***" has the meaning set forth in Section 2.1(b)(ii).

"***Indebtedness***" means indebtedness in respect of borrowed money.

"Initial Credit Agreement" has the meaning set forth in the second paragraph of this Agreement.

"***Initial Credit Agreement Cash Management Agreements***" means the Cash Management Agreements as defined in the Initial Credit Agreement.

"***Initial Credit Agreement Claimholders***" means the holders of any Initial Credit Agreement Obligations, including the "Secured Parties" as defined in the Initial Credit Agreement or in the Initial Credit Agreement Collateral Documents and the Initial First Lien Representative and Initial First Lien Collateral Agent.

"Initial Credit Agreement Collateral Documents" means the Security Documents (as defined in the Initial Credit Agreement) and any other agreement, document or instrument entered into for the purpose of granting a Lien to secure any Initial Credit Agreement Obligations or to perfect such Lien (as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time).

"***Initial Credit Agreement Documents***" means the Initial Credit Agreement, each Initial Credit Agreement Collateral Document and the other Loan Documents (as defined in the Initial Credit Agreement), and each of the other agreements, documents and instruments providing for or evidencing any other Initial Credit Agreement Obligation, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"***Initial Credit Agreement Hedge Agreement***" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other hedging agreements, but excluding long term agreements for the purchase of goods and services entered into in the ordinary course of business, entered into with a Hedge Bank (as defined in the Initial Credit Agreement) in order to satisfy the requirements of the Initial Credit Agreement or otherwise as permitted under the Initial Credit Agreement Documents and secured under the Initial Credit Agreement Collateral Documents.

"***Initial Credit Agreement Obligations***" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Notwithstanding the foregoing, Obligations of any Guarantor shall in no event include any Excluded Swap Obligations (as defined in the Collateral Agreement) of such Guarantor (each term in this definition as defined in the Credit Agreement).

"***Initial First Lien Collateral Agent***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Initial First Lien Representative***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Initial Other Collateral Agent***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Initial Other Collateral Documents***" means the Security Documents (as defined in the Initial Other First Lien Agreement) and any other agreement, document or instrument entered into for the purpose of granting a Lien to secure any Initial Other First Lien Obligations or to perfect such Lien (as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time).

"***Initial Other First Lien Agreement***" means the Indenture.

"***Initial Other First Lien Claimholders***" means the holders of any Initial Other First Lien Obligations, the Initial Other Representative and the Initial Other Collateral Agent.

"***Initial Other First Lien Documents***" means the Initial Other First Lien Agreement, each Initial Other Collateral Document and each of the other agreements, documents and instruments providing for or evidencing any other Initial Other First Lien Obligations, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"***Initial Other First Lien Obligations***" means the Other First Lien Obligations pursuant to the Initial Other First Lien Documents.

"***Initial Other Representative***" has the meaning set forth in the introductory paragraph to this Agreement.

"***Insolvency or Liquidation Proceeding***" means:

(a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"***Intervening Creditor***" has the meaning set forth in Section 2.1(b)(i).

"***Joinder Agreement***" means a document in the form of Exhibit A to this Agreement required to be delivered by a Representative to each Collateral Agent and each other Representative pursuant to Section 5.14 of this Agreement in order to create an additional Series of Other First Lien Obligations or a Refinancing of any Series of First Lien Obligations (including the Credit Agreement) and bind First Lien Claimholders hereunder.

"***Lien***" means any lien (including judgment liens and liens arising by operation of law), mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, call, trust (whether contractual, statutory, deemed, equitable, constructive, resulting or otherwise), UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

"***Major Non-Controlling Representative***" means the Representative of the Series of Other First Lien Obligations that constitutes the largest outstanding principal amount of any then outstanding Series of Other First Lien Obligations (provided, however, that if there are two outstanding Series of Other First Lien Obligations which have an equal outstanding principal amount, the Series of Other First Lien Obligations with the earlier maturity date shall be considered to have the larger outstanding principal amount for purposes of this clause (i)). For purposes of this definition, "principal amount" shall be deemed to include the face amount of any outstanding letter of credit issued under the particular Series.

"***Non-Controlling Claimholders***" means the First Lien Claimholders which are not Controlling Claimholders.

"***Non-Controlling Representative***" means, at any time, each Representative that is not the Applicable Representative at such time.

"***Non-Controlling Representative Enforcement Date***" means, with respect to any Non-Controlling Representative, the date which is 180 days (throughout which 180 day period such Non-Controlling Representative was the Major Non-Controlling Representative) after the occurrence of both (i) an Event of Default (under and as defined in the First Lien Documents under which such Non-Controlling Representative is the Representative) and (ii) each Collateral Agent's and each other Representative's receipt of written notice from such Non-Controlling Representative certifying that (x) such Non-Controlling Representative is the Major Non-Controlling Representative and that an Event of Default (under and as defined in the First Lien Documents under which such Non-Controlling Representative is the Representative) has occurred and is continuing and (y) the First Lien Obligations of the Series with respect to which such Non-Controlling Representative is the Representative are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the applicable Other First Lien Document; provided that the Non-Controlling Representative Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred (1) at any time the Applicable Collateral Agent acting on the instructions of the Applicable Representative has commenced and is diligently pursuing any enforcement action with respect to Shared Collateral, (2) at any time the Grantor that has granted a security interest in Shared Collateral is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding or (3) if such Non-Controlling Representative subsequently rescinds or withdraws the written notice provided for in clause (ii).

"***Other First Lien Agreement***" means any indenture, notes, credit agreement or other agreement, document (including any document governing reimbursement obligations in respect of letters of credit issued pursuant to any Other First Lien Agreement) or instrument, including the Initial Other First Lien Agreement, pursuant to which any Grantor has or will incur Other First Lien Obligations; provided that, in each case, the Indebtedness thereunder (other than the Initial Other First Lien Obligations) has been designated as Other First Lien Obligations pursuant to and in accordance with Section 5.14. For avoidance of doubt, neither the Initial Credit Agreement nor any Replacement Credit Agreement shall constitute an Other First Lien Agreement.

"***Other First Lien Claimholder***" means the holders of any Other First Lien Obligations and any Representative and Collateral Agent with respect thereto and shall include the Initial Other First Lien Claimholders.

"***Other First Lien Collateral Agents***" means each of the Collateral Agents other than the Credit Agreement Collateral Agent.

"***Other First Lien Collateral Documents***" means the Security Documents or Collateral Documents or similar term (in each case as defined in the applicable Other First Lien Agreement) and any other agreement, document or instrument entered into for the purpose of granting a Lien to secure any Other First Lien Obligations or to perfect such Lien (as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time).

"***Other First Lien Documents***" means, with respect to the Initial Other First Lien Obligations or any Series of Other First Lien Obligations, the Other First Lien Agreements, including the Initial Other First Lien Documents and the Other First Lien Collateral Documents applicable thereto and each other agreement, document and instrument providing for or evidencing any other Other First Lien Obligation, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time; provided that, in each case, the Indebtedness thereunder (other than the Initial Other First Lien Obligations) has been designated as Other First Lien Obligations pursuant to and in accordance with Section 5.14 hereto.

"***Other First Lien Obligations***" means all amounts owing to any Other First Lien Claimholder (including any Initial Other First Lien Claimholder) pursuant to the terms of any Other First Lien Document (including the Initial Other First Lien Documents), including all amounts in respect of any principal, interest (including any Post-Petition Interest), premium (if any), penalties, fees, expenses (including fees, expenses and disbursements of agents, professional advisors and legal counsel), indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts, in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding. Other First Lien Obligations shall include any Registered Equivalent Notes and guarantees thereof by the Grantors issued in exchange therefor. For avoidance of doubt, neither the Initial Credit Agreement Obligations nor any Replacement Credit Agreement Obligations shall constitute Other First Lien Obligations.

"***Other First Lien Representative*** " means each of the First Lien Representatives other than the Initial First Lien Representative.

"***Possessory Collateral***" means any Shared Collateral in the possession of any Collateral Agent (or its agents or bailees), to the extent that possession thereof perfects a Lien thereon under the Uniform Commercial Code of any jurisdiction or otherwise. Possessory Collateral includes any Certificated Securities, Promissory Notes, Instruments, and Tangible Chattel Paper, in each case, delivered to or in the possession of any Collateral Agent under the terms of the First Lien Collateral Documents.

"***Post-Petition Interest***" means interest, fees, expenses and other charges that pursuant to the Credit Agreement Documents or Other First Lien Documents, as applicable, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"***Proceeds***" has the meaning set forth in Section 2.1(a).

"***Refinance***" means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other Indebtedness in exchange or replacement for, such Indebtedness in whole or in part and regardless of whether the principal amount of such Refinancing Indebtedness is the same, greater than or less than the principal amount of the Refinanced Indebtedness. **"Refinanced"** and **"Refinancing"** shall have correlative meanings.

"***Registered Equivalent Notes***" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees and substantially the same collateral) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"***Replacement Collateral Agent***" means, in respect of any Replacement Credit Agreement, the collateral agent or person serving in similar capacity under the Replacement Credit Agreement.

"***Replacement Credit Agreement***" means any loan agreement, indenture or other agreement that (i) Refinances the Credit Agreement in accordance with Section 2.8 hereof so long as, after giving effect to such Refinancing, the agreement that was the Credit Agreement immediately prior to such Refinancing is no longer secured, and no longer required to be secured, by any of the Collateral and (ii) becomes the Credit Agreement hereunder by designation as such pursuant to Section 5.14.

"***Replacement Credit Agreement Cash Management Agreements***" means the Cash Management Agreements or Banking Product Obligations or similar term as defined in the Replacement Credit Agreement.

"Replacement Credit Agreement Claimholders" means the holders of any Replacement Credit Agreement Obligations, including the "Secured Parties" (or similar term) as defined in the Replacement Credit Agreement or in the Replacement Credit Agreement Collateral Documents and the Replacement Representative and Replacement Collateral Agent.

"Replacement Credit Agreement Collateral Documents" means the Security Documents or Collateral Documents or similar term (as defined in the Replacement Credit Agreement) and any other agreement, document or instrument entered into for the purpose of granting a Lien to secure any Replacement Credit Agreement Obligations or to perfect such Lien (as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time).

"***Replacement Credit Agreement Documents***" means the Replacement Credit Agreement, each Replacement Credit Agreement Collateral Document and the other Loan Documents or similar term (as defined in the Replacement Credit Agreement), and each of the other agreements, documents and instruments providing for or evidencing any other Replacement Credit Agreement Obligation, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"***Replacement Credit Agreement Hedge Agreement***" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other hedging agreements, but excluding long term agreements for the purchase of goods and services entered into in the ordinary course of business, entered into with a Hedge Bank or similar term (as defined in the Replacement Credit Agreement) in order to satisfy the requirements of the Replacement Credit Agreement or otherwise as permitted under the Replacement Credit Agreement Documents and secured under the Replacement Credit Agreement Collateral Documents.

"***Replacement Credit Agreement Obligations***" means:

(a) (i) all principal of and interest (including any Post-Petition Interest) and premium (if any) on all loans made pursuant to the Replacement Credit Agreement, (ii) all reimbursement obligations (if any) and interest thereon (including any Post-Petition Interest) with respect to any letter of credit or similar instrument issued pursuant to the Replacement Credit Agreement, (iii) all obligations with respect to Replacement Credit Agreement Hedge Agreements and all amounts owing in respect of Cash Management Obligations (as defined in the Replacement Credit Agreement) and (iv) all guarantee obligations, fees, expenses and all other obligations under the Replacement Credit Agreement and the other Replacement Credit Agreement Documents, in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding; and

(b) to the extent any payment with respect to any Replacement Credit Agreement Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Other First Lien Claimholder, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of this Agreement and the rights and obligations of the Replacement Credit Agreement Claimholders and the Other First Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Replacement Credit Agreement Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the Replacement Credit Agreement Claimholders and the Other First Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Replacement Credit Agreement Obligations".

"***Replacement Representative***" means, in respect of any Replacement Credit Agreement, the administrative agent, trustee or person serving in similar capacity under the Replacement Credit Agreement.

"***Representative***" means, at any time, (i) in the case of any Initial Credit Agreement Obligations or the Initial Credit Agreement Claimholders, the Initial First Lien Representative, (ii) in the case of any Replacement Credit Agreement Obligations or the Replacement Credit Agreement Claimholders, the Replacement Representative, (iii) in the case of the Initial Other First Lien Obligations or the Initial Other First Lien Claimholders, the Initial Other Representative, and (iv) in the case of any other Series of Other First Lien Obligations or Other First Lien Claimholders of such Series that becomes subject to this Agreement after the date hereof, the Additional First Lien Representative for such Series.

"***Series***" means (a) with respect to the First Lien Claimholders, each of (i) the Initial Credit Agreement Claimholders (in their capacities as such), (ii) the Initial Other First Lien Claimholders (in their capacities as such), (iii) the Replacement Credit Agreement Claimholders (in their capacities as such), and (iv) the Other First Lien Claimholders (in their capacities as such) that become subject to this Agreement after the date hereof that are represented by a common Representative (in its capacity as such for such Other First Lien Claimholders) and (b) with respect to any First Lien Obligations, each of (i) the Initial Credit Agreement Obligations, (ii) the Initial Other First Lien Obligations, (iii) the Replacement Credit Agreement Obligations and (iv) the Other First Lien Obligations incurred pursuant to any Other First Lien Document, which pursuant to any Joinder Agreement, are to be represented hereunder by a common Representative (in its capacity as such for such Other First Lien Obligations).

"***Shared Collateral***" means, at any time, subject to Section 2.1(e) hereof, Collateral in which the holders of two or more Series of First Lien Obligations (or their respective Representatives or Collateral Agents on behalf of such holders) hold, or purport to hold, or are required to hold pursuant to the First Lien Documents in respect of such Series, a valid security interest or Lien at such time. If more than two Series of First Lien Obligations are outstanding at any time and the holders of less than all Series of First Lien Obligations hold, or purport to hold, or are required to hold pursuant to the First Lien Documents in respect of such Series, a valid security interest or Lien in any Collateral at such time, then such Collateral shall constitute Shared Collateral for those Series of First Lien Obligations that hold, or purport to hold, or are required to hold pursuant to the First Lien Documents in respect of such Series, a valid security interest or Lien in such Collateral at such time and shall not constitute Shared Collateral for any Series which does not hold, or purport to hold, or are required to hold pursuant to the First Lien Documents in respect of such Series, a valid security interest or Lien in such Collateral at such time.

"***Subsidiary***" means, with respect to any Person, any other Person of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of such other Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or Controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"***UCC***" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

"***Underlying Assets***" has the meaning set forth in Section 2.4(a).

SECTION 1.2 Rules of Interpretation.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as amended, restated, amended and restated, supplemented or otherwise modified from time to time and any reference herein to any statute or regulations shall include any amendment, renewal, extension or replacement thereof, (ii) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns from time to time, (iii) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) unless otherwise expressly qualified herein, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive.

ARTICLE II.

PRIORITIES AND AGREEMENTS WITH RESPECT TO SHARED COLLATERAL

SECTION 2.1 Priority of Claims.

(a) Anything contained herein or in any of the First Lien Documents to the contrary notwithstanding (but subject to Sections 2.1(b) and 2.11(b)), if an Event of Default has occurred and is continuing, and the Applicable Collateral Agent is taking action to enforce rights in respect of any Collateral, or any distribution is made in respect of any Shared Collateral in any Bankruptcy Case or in connection with any Insolvency or Liquidation Proceeding of any Grantor or any First Lien Claimholder receives any payment pursuant to any intercreditor agreement (other than this Agreement) or otherwise with respect to any Shared Collateral, the proceeds of any sale, collection or other liquidation of any Shared Collateral or Equity Release Proceeds received by any First Lien Claimholder or received by the Applicable Collateral Agent or any First Lien Claimholder pursuant to any such intercreditor agreement or otherwise with respect to such Collateral and proceeds of any such distribution (subject, in the case of any such distribution, to the sentence immediately following clause THIRD below) to which the First Lien Obligations are entitled under any intercreditor agreement (other than this Agreement) or otherwise (all proceeds of any sale, collection or other liquidation of any Collateral comprising either Shared Collateral or Equity Release Proceeds and all proceeds of any such distribution and any proceeds of any insurance covering the Shared Collateral received by the Applicable Collateral Agent and not returned to any Grantor under any First Lien Document being collectively referred to as "***Proceeds***"), shall be applied by the Applicable Collateral Agent in the following order:

(i) FIRST, to the payment of all amounts owing to each Collateral Agent (in its capacity as such) and each Representative (in its capacity as such) secured by such Shared Collateral or, in the case of Equity Release Proceeds, secured by the Underlying Assets, including all reasonable costs and expenses incurred by each Collateral Agent (in its capacity as such) and each Representative (in its capacity as such) in connection with such collection or sale or otherwise in connection with this Agreement, any other First Lien Credit Document or any of the First Lien Obligations, including all court costs and the reasonable fees and expenses of its agents and legal counsel, and any other reasonable costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other First Lien Document and all fees and indemnities owing to such Collateral Agents and Representatives, ratably to each such Collateral Agent and Representative in accordance with the amounts payable to it pursuant to this clause FIRST;

(ii) SECOND, subject to Sections 2.1(b) and 2.11(b), to the extent Proceeds remain after the application pursuant to preceding clause (i), to each Representative for the payment in full of the other First Lien Obligations of each Series secured by such Shared Collateral or, in the case of Equity Release Proceeds, secured by the Underlying Assets, and, if the amount of such Proceeds are insufficient to pay in full the First Lien Obligations of each Series so secured then such Proceeds shall be allocated among the Representatives of each Series secured by such Shared Collateral or, in the case of Equity Release Proceeds, secured by the Underlying Assets, pro rata according to the amounts of such First Lien Obligations owing to each such respective Representative and the other First Lien Claimholders represented by it for distribution by such Representative in accordance with its respective First Lien Documents; and

(iii) THIRD, any balance of such Proceeds remaining after the application pursuant to preceding clauses (i) and (ii), to the Grantors, their successors or assigns from time to time, or to whomever may be lawfully entitled to receive the same, including pursuant to any Junior Lien Intercreditor Agreement (as defined in the Credit Agreement), if applicable.

If, despite the provisions of this Section 2.1(a), any First Lien Claimholder shall receive any payment or other recovery in excess of its portion of payments on account of the First Lien Obligations to which it is then entitled in accordance with this Section 2.1(a), such First Lien Claimholder shall hold such payment or recovery in trust for the benefit of all First Lien Claimholders for distribution in accordance with this Section 2.1(a).

(b) (i) Notwithstanding the foregoing, with respect to any Shared Collateral or Equity Release Proceeds for which a third party (other than a First Lien Claimholder) has a Lien that is junior in priority to the Lien of any Series of First Lien Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the Lien of any other Series of First Lien Obligations (such third party an "***Intervening Creditor***"), the value of any Shared Collateral, Equity Release Proceeds or Proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Shared Collateral, Equity Release Proceeds or Proceeds to be distributed in respect of the Series of First Lien Obligations with respect to which such Impairment exists.

(i) In furtherance of the foregoing and without limiting the provisions of Section 2.3, it is the intention of the First Lien Claimholders of each Series that the holders of First Lien Obligations of such Series (and not the First Lien Claimholders of any other Series) (1) bear the risk of any determination by a court of competent jurisdiction that (x) any of the First Lien Obligations of such Series are unenforceable under applicable law or are subordinated to any other obligations (other than another Series of First Lien Obligations), (y) any of the First Lien Obligations of such Series do not have a valid and perfected security interest in any of the Collateral securing any other Series of First Lien Obligations and/or (z) any intervening security interest exists securing any other obligations (other than another Series of First Lien Obligations) on a basis ranking prior to the security interest of such Series of First Lien Obligations but junior to the security interest of any other Series of First Lien Obligations and (2) not take into account for purposes of this Agreement the existence of any Collateral (other than Equity Release Proceeds) for any other Series of First Lien Obligations that is not Shared Collateral (any such condition referred to in the foregoing clauses (1) or (2) with respect to any Series of First Lien Obligations, an "***Impairment***" of such Series); provided that the existence of a maximum claim with respect to any real property subject to a mortgage which applies to all First Lien Obligations shall not be deemed to be an Impairment of any Series of First Lien Obligations. In the event of any Impairment with respect to any Series of First Lien Obligations, the results of such Impairment shall be borne solely by the holders of such Series of First Lien Obligations, and the rights of the holders of such Series of First Lien Obligations (including the right to receive distributions in respect of such Series of First Lien Obligations pursuant to Section 2.1) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of the Series of such First Lien Obligations subject to such Impairment. Additionally, in the event the First Lien Obligations of any Series are modified pursuant to applicable law (including pursuant to Section 1129 of the Bankruptcy Code), any reference to such First Lien Obligations or the First Lien Credit Documents governing such First Lien Obligations shall refer to such obligations or such documents as so modified.

(c) It is acknowledged that the First Lien Obligations of any Series may, subject to the limitations set forth in the then existing First Lien Documents and subject to any limitations set forth in this Agreement, be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, Refinanced or otherwise amended or modified from time to time, all without affecting the priorities set forth in Section 2.1(a) or the provisions of this Agreement defining the relative rights of the First Lien Claimholders of any Series.

(d) Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing any Series of First Lien Obligations granted on the Shared Collateral and notwithstanding any provision of the Uniform Commercial Code of any jurisdiction, or any other applicable law or the First Lien Documents or any defect or deficiencies in the Liens securing the First Lien Obligations of any Series or any other circumstance whatsoever (but, in each case, subject to Section 2.1(b)), each First Lien Claimholder hereby agrees that the Liens securing each Series of First Lien Obligations on any Shared Collateral shall be of equal priority.

(e) Notwithstanding anything in this Agreement or any other First Lien Document to the contrary, prior to the Discharge of the Credit Agreement Obligations, Collateral consisting of cash and cash equivalents pledged to secure Credit Agreement Obligations consisting of reimbursement obligations in respect of letters of credit pursuant to the Credit Agreement shall be applied as specified in the Credit Agreement and will not constitute Shared Collateral.

SECTION 2.2 Actions with Respect to Shared Collateral; Prohibition on Contesting Liens.

(a) Notwithstanding Section 2.1, (i) only the Applicable Collateral Agent shall act or refrain from acting with respect to Shared Collateral (including with respect to any other intercreditor agreement with respect to any Shared Collateral), (ii) the Applicable Collateral Agent shall act only on the instructions of the Applicable Representative and shall not follow any instructions with respect to such Shared Collateral (including with respect to any other intercreditor agreement with respect to any Shared Collateral) from any Non-Controlling Representative (or any other First Lien Claimholder other than the Applicable Representative) and (iii) no Other First Lien Claimholder shall or shall instruct any Collateral Agent to, and any other Collateral Agent that is not the Applicable Collateral Agent shall not, commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, administrator, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its security interest in or realize upon, or take any other action available to it in respect of, Shared Collateral (including with respect to any other intercreditor agreement with respect to Shared Collateral), whether under any First Lien Collateral Document (other than the First Lien Collateral Documents applicable to the Applicable Collateral Agent), applicable law or otherwise, it being agreed that only the Applicable Collateral Agent, acting in accordance with the First Lien Collateral Documents applicable to it, shall be entitled to take any such actions or exercise any remedies with respect to such Shared Collateral at such time.

(b) Without limiting the provisions of Section 4.2, each Representative and Collateral Agent that is not the Applicable Collateral Agent hereby appoints the Applicable Collateral Agent as its agent and authorizes the Applicable Collateral Agent to exercise any and all remedies under each First Lien Collateral Document with respect to Shared Collateral and to execute releases in connection therewith.

(c) Notwithstanding the equal priority of the Liens securing each Series of First Lien Obligations granted on the Shared Collateral, the Applicable Collateral Agent (acting on the instructions of the Applicable Representative) may deal with the Shared Collateral as if such Applicable Collateral Agent had a senior and exclusive Lien on such Shared Collateral. No Non-Controlling Representative, Non-Controlling Claimholder or Collateral Agent that is not the Applicable Collateral Agent will contest, protest or object to any foreclosure proceeding or action brought by the Applicable Collateral Agent, the Applicable Representative or the Controlling Claimholders or any other exercise by the Applicable Collateral Agent, the Applicable Representative or the Controlling Claimholders of any rights and remedies relating to the Shared Collateral. The foregoing shall not be construed to limit the rights and priorities of any First Lien Claimholder, Collateral Agent or Representative with respect to any Collateral not constituting Shared Collateral.

(d) Each of the Collateral Agents (other than the Credit Agreement Collateral Agent) and the Representatives (other than the Credit Agreement Representative) agrees that it will not accept any Lien on any Collateral for the benefit of any Series of Other First Lien Obligations (other than funds deposited for the satisfaction, discharge or defeasance of any Other First Lien Agreement) other than pursuant to the First Lien Collateral Documents, and by executing this Agreement (or a Joinder Agreement), each such Collateral Agent and each such Representative and the Series of First Lien Claimholders for which it is acting hereunder agree to be bound by the provisions of this Agreement and the other First Lien Collateral Documents applicable to it.

(e) Each of the First Lien Claimholders agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the perfection, priority, validity or enforceability of a Lien held by or on behalf of any of the First Lien Claimholders in all or any part of the Collateral or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair (i) the rights of any Collateral Agent or any Representative to enforce this Agreement or (ii) the rights of any First Lien Secured Party to contest or support any other Person in contesting the enforceability of any Lien purporting to secure obligations not constituting First Lien Obligations.

SECTION 2.3 No Interference; Payment Over; Exculpatory Provisions.

(a) Each First Lien Claimholder agrees that (i) it will not challenge or question or support any other Person in challenging or questioning in any proceeding the validity or enforceability of any First Lien Obligations of any Series or any First Lien Collateral Document or the validity, attachment, perfection or priority of any Lien under any First Lien Collateral Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any First Lien Claimholder from challenging or questioning the validity or enforceability of any First Lien Obligations constituting unmatured interest or the validity of any Lien relating thereto pursuant to Section 502(b)(2) of the Bankruptcy Code, (ii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral by the Applicable Collateral Agent, (iii) except as provided in Section 2.2, it shall have no right to and shall not otherwise (A) direct the Applicable Collateral Agent or any other First Lien Claimholder to exercise any right, remedy or power with respect to any Shared Collateral (including pursuant to any other intercreditor agreement) or (B) consent to, or object to, the exercise by, or any forbearance from exercising by, the Applicable Collateral Agent or any other First Lien Claimholder represented by it of any right, remedy or power with respect to any Collateral, (iv) it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against the Applicable Collateral Agent or any other First Lien Claimholder represented by it seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Collateral and (v) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any of the Applicable Collateral Agent or any other First Lien Claimholder to (i) enforce this Agreement or (ii) contest or support any other Person in contesting the enforceability of any Lien purporting to secure obligations not constituting First Lien Obligations.

(b) Each First Lien Claimholder hereby agrees that if it shall obtain possession of any Shared Collateral or shall realize any proceeds or payment in respect of any Shared Collateral, pursuant to any First Lien Collateral Document or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding or through any other exercise of remedies (including pursuant to any intercreditor agreement), at any time prior to the Discharge of each of the First Lien Obligations, then it shall hold such Shared Collateral, proceeds or payment in trust for the other First Lien Claimholders having a security interest in such Shared Collateral and promptly transfer any such Shared Collateral, proceeds or payment, as the case may be (at the sole cost and expense of the Grantors), to the Applicable Collateral Agent, to be distributed by such Applicable Collateral Agent in accordance with the provisions of Section 2.1(a) hereof, provided, however, that the foregoing shall not apply to any Shared Collateral purchased by any First Lien Claimholder for cash pursuant to any exercise of remedies permitted hereunder.

(c) None of the Applicable Collateral Agent, any Applicable Representative or any other First Lien Claimholder shall be liable for any action taken or omitted to be taken by the Applicable Collateral Agent, such Applicable Representative or any other First Lien Claimholder with respect to any Collateral in accordance with the provisions of this Agreement.

SECTION 2.4 Automatic Release of Liens.

(a) If, at any time any Shared Collateral is transferred to a third party or otherwise disposed of, in each case, in connection with any enforcement by the Applicable Collateral Agent in accordance with the provisions of this Agreement, then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the other Collateral Agents for the benefit of each Series of First Lien Claimholders (or in favor of such other First Lien Claimholders if directly secured by such Liens) upon such Shared Collateral will automatically be released and discharged upon final conclusion of such disposition as and when, but only to the extent, such Liens of the Applicable Collateral Agent on such Shared Collateral are released and discharged; provided that any proceeds of any Shared Collateral realized therefrom shall be applied pursuant to Section 2.1 hereof. If in connection with any such foreclosure or other exercise of remedies by the Applicable Collateral Agent, the Applicable Collateral Agent or related Applicable Representative of such Series of First Lien Obligations releases any guarantor from its obligation under a guarantee of the Series of First Lien Obligations for which it serves as agent prior to a Discharge of such Series of First Lien Obligations, such guarantor also shall be released from its guarantee of all other First Lien Obligations. If in connection with any such foreclosure or other exercise of remedies by the Applicable Collateral Agent, the equity interests of any Person are foreclosed upon or otherwise disposed of and the Applicable Collateral Agent releases its Lien on the property or assets of such Person, then the Liens of each other Collateral Agent (or in favor of such other First Lien Claimholders if directly secured by such Liens) with respect to any Collateral consisting of the property or assets of such Person will be automatically released to the same extent as the Liens of the Applicable Collateral Agent are released; provided that any proceeds of any such equity interests foreclosed upon where the Applicable Collateral Agent releases its Lien on the assets of such Person on which another Series of First Lien Obligations holds a Lien on any of the assets of such Person (any such assets, the "***Underlying Assets***") which Lien is released as provided in this sentence (any such Proceeds being referred to herein as "***Equity Release Proceeds***" regardless of whether or not such other Series of First Lien Obligations holds a Lien on such equity interests so disposed of) shall be applied pursuant to Section 2.1 hereof.

(b) Without limiting the rights of the Applicable Collateral Agent under Section 4.2, each Collateral Agent and each Representative agrees to execute and deliver (at the sole cost and expense of the Grantors) all such authorizations and other instruments as shall reasonably be requested by the Applicable Collateral Agent to evidence and confirm any release of Shared Collateral, Underlying Assets or guarantee provided for in this Section.

SECTION 2.5 Certain Agreements with Respect to Bankruptcy or Insolvency Proceedings.

(a) This Agreement shall continue in full force and effect notwithstanding the commencement of any proceeding under the Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law by or against any Grantor or any of its subsidiaries.

(b) If any Grantor shall become subject to a case (a "***Bankruptcy Case***") under the Bankruptcy Code and shall, as debtor(s)-in-possession, move for approval of financing ("***DIP Financing***") to be provided by one or more lenders (the "***DIP Lenders***") under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, each First Lien Claimholder (other than any Controlling Claimholder or any Representative of any Controlling Claimholder) agrees that it will not raise any objection to any such financing or to the Liens on the Shared Collateral securing the same ("***DIP Financing Liens***") or to any use of cash collateral that constitutes Shared Collateral, unless a Representative of the Controlling Claimholders shall then oppose or object to such DIP Financing or such DIP Financing Liens or use of cash collateral (and (i) to the extent that such DIP Financing Liens are senior to the Liens on any such Shared Collateral for the benefit of the Controlling Claimholders, each Non-Controlling Claimholder will subordinate its Liens with respect to such Shared Collateral on the same terms as the Liens of the Controlling Claimholders (other than any Liens of any First Lien Claimholders constituting DIP Financing Liens) are subordinated thereto, and (ii) to the extent that such DIP Financing Liens rank *pari passu* with the Liens on any such Shared Collateral granted to secure the First Lien Obligations of the Controlling Claimholders, each Non-Controlling Claimholder will confirm the priorities with respect to such Shared Collateral as set forth herein), in each case so long as (A) the First Lien Claimholders of each Series retain the benefit of their Liens on all such Shared Collateral pledged to the DIP Lenders, including proceeds thereof arising after the commencement of such proceeding, with the same priority vis-à-vis all the other First Lien Claimholders (other than any Liens of the First Lien Claimholders constituting DIP Financing Liens) as existed prior to the commencement of the Bankruptcy Case, (B) the First Lien Claimholders of each Series are granted Liens on any additional collateral pledged to any First Lien Claimholders as adequate protection or otherwise in connection with such DIP Financing or use of cash collateral, with the same priority vis-à-vis the First Lien Claimholders as set forth in this Agreement (other than any Liens of any First Lien Claimholders constituting DIP Financing Liens), (C) if any amount of such DIP Financing or cash collateral is applied to repay any of the First Lien Obligations, such amount is applied pursuant to Section 2.1(a) of this Agreement, and (D) if any First Lien Claimholders are granted adequate protection with respect to the First Lien Obligations subject hereto, including in the form of periodic payments, in connection with such use of cash collateral, the proceeds of such adequate protection are applied pursuant to Section 2.1(a) of this Agreement; provided that the First Lien Claimholders of each Series shall have a right to object to the grant of a Lien to secure the DIP Financing over any Collateral subject to Liens in favor of the First Lien Claimholders of such Series or its Representative that shall not constitute Shared Collateral (unless such Collateral fails to constitute Shared Collateral because the Lien in respect thereof constitutes a Declined Lien with respect to such First Lien Claimholders or their Representative or Collateral Agent); provided, further, that the First Lien Claimholders receiving adequate protection shall not object to any other First Lien Claimholder receiving adequate protection comparable to any adequate protection granted to such First Lien Claimholders in connection with a DIP Financing or use of cash collateral.

(c) If any First Lien Claimholder is granted adequate protection (A) in the form of Liens on any additional collateral, then each other First Lien Claimholder shall be entitled to seek, and each First Lien Claimholder will consent and not object to, adequate protection in the form of Liens on such additional collateral with the same priority vis-à-vis the First Lien Claimholders as set forth in this Agreement, (B) in the form of a superpriority or other administrative claim, then each other First Lien Claimholder shall be entitled to seek, and each First Lien Claimholder will consent and not object to, adequate protection in the form of a pari passu superpriority or administrative claim or (C) in the form of periodic or other cash payments, then the proceeds of such adequate protection must be applied to all First Lien Obligations pursuant to Section 2.1.

SECTION 2.6 Reinstatement. In the event that any of the First Lien Obligations shall be paid in full and such payment or any part thereof shall subsequently, for whatever reason (including an order or judgment for disgorgement of a preference under Title 11 of the Bankruptcy Code, or any similar law, or the settlement of any claim in respect thereof), be required to be returned or repaid, the terms and conditions of this Agreement shall be fully applicable thereto until all such First Lien Obligations shall again have been paid in full in cash. This Section 2.6 shall survive termination of this Agreement.

SECTION 2.7 Insurance and Condemnation Awards. As among the First Lien Claimholders, the Applicable Collateral Agent (acting at the direction of the Applicable Representative), shall have the right, but not the obligation, to adjust or settle any insurance policy or claim covering or constituting Shared Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Shared Collateral. To the extent any Collateral Agent or any other First Lien Claimholder receives proceeds of such insurance policy and such proceeds are not permitted or required to be returned to any Grantor under the applicable First Lien Documents, such proceeds shall be turned over to the Applicable Collateral Agent for application as provided in Section 2.1 hereof.

SECTION 2.8 Refinancings. The First Lien Obligations of any Series may, subject to Section 5.14, be Refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the Refinancing transaction under any First Lien Document) of any First Lien Claimholder of any other Series, all without affecting the priorities provided for herein or the other provisions hereof; provided that the Representative and Collateral Agent of the holders of any such Refinancing Indebtedness shall have executed a Joinder Agreement on behalf of the holders of such Refinancing Indebtedness. If such Refinancing Indebtedness is intended to constitute a Replacement Credit Agreement, the Company shall so state in its Designation.

SECTION 2.9 Gratuitous Bailee/Agent for Perfection.

(a) The Applicable Collateral Agent shall be entitled to hold any Possessory Collateral constituting Shared Collateral.

(b) Notwithstanding the foregoing, each Collateral Agent agrees to hold any Possessory Collateral constituting Shared Collateral and any other Shared Collateral from time to time in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee for the benefit of each other First Lien Claimholder (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee, solely for the purpose of perfecting the security interest granted in such Shared Collateral, if any, pursuant to the applicable First Lien Collateral Documents, in each case, subject to the terms and conditions of this Section 2.9. Solely with respect to any Deposit Accounts constituting Shared Collateral under the control (within the meaning of Section 9-104 of the UCC) of any Collateral Agent, each such Collateral Agent agrees to also hold control over such Deposit Accounts as gratuitous agent for each other First Lien Claimholder and any assignee solely for the purpose of perfecting the security interest in such Deposit Accounts, subject to the terms and conditions of this Section 2.9.

(c) No Collateral Agent shall have any obligation whatsoever to any First Lien Claimholder to ensure that the Possessory Collateral and Control Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 2.9. The duties or responsibilities of each Collateral Agent under this Section 2.9 shall be limited solely to holding any Possessory Collateral constituting Shared Collateral or any other Shared Collateral in its possession or control as gratuitous bailee (and with respect to Deposit Accounts, as gratuitous agent) in accordance with this Section 2.9 and delivering the Possessory Collateral constituting Shared Collateral as provided in Section 2.9(e) below.

(d) None of the Collateral Agents or any of the First Lien Claimholders shall have by reason of the First Lien Documents, this Agreement or any other document a fiduciary relationship in respect of the other Collateral Agents or any other First Lien Claimholder, and each Collateral Agent and each First Lien Claimholder hereby waives and releases the other Collateral Agents and First Lien Claimholders from all claims and liabilities arising pursuant to any Collateral Agent's role under this Section 2.9 as gratuitous bailee with respect to the Possessory Collateral constituting Shared Collateral or any other Shared Collateral in its possession or control (and with respect to the Deposit Accounts, as gratuitous agent).

(e) At any time the Applicable Collateral Agent is no longer the Applicable Collateral Agent, such outgoing Applicable Collateral Agent shall deliver the remaining Possessory Collateral constituting Shared Collateral in its possession (if any) together with any necessary endorsements (which endorsement shall be without recourse and without any representation or warranty), first, to the then Applicable Collateral Agent to the extent First Lien Obligations remain outstanding and second, to the applicable Grantor to the extent no First Lien Obligations remain outstanding (in each case, so as to allow such Person to obtain possession or control of such Shared Collateral) or to whomever may be lawfully entitled to receive the same, including pursuant to any Junior Lien Intercreditor Agreement (as defined in the Credit Agreement), if applicable. The outgoing Applicable Collateral Agent further agrees to take all other action reasonably requested by the then Applicable Collateral Agent at the expense of the Company in connection with the then Applicable Collateral Agent obtaining a first-priority security interest in the Shared Collateral.

SECTION 2.10 Amendments to First Lien Collateral Documents.

(a) Without the prior written consent of each other Collateral Agent, each Collateral Agent agrees that no First Lien Collateral Document may be amended, restated, amended and restated, supplemented, replaced or Refinanced or otherwise modified from time to time or entered into to the extent such amendment, supplement, Refinancing or modification, or the terms of any new First Lien Collateral Document, would be prohibited by, or would require any Grantor to act or refrain from acting in a manner that would violate, any of the terms of this Agreement.

(b) In determining whether an amendment to any First Lien Collateral Document is permitted by this Section 2.10, each Collateral Agent may conclusively rely on an officer's certificate of the Company stating that such amendment is permitted by this Section 2.10.

SECTION 2.11 Similar Liens and Agreements.

(a) Subject to Section 2.11(b) below, the parties hereto agree that it is their intention that the Collateral be identical for all First Lien Claimholders provided, that this provision will not be violated with respect to any particular Series if the First Lien Document for such Series prohibits the Collateral Agent for that Series from accepting a Lien on such asset or property or such Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Liens with respect to a particular Series, a "***Declined Lien***"). In furtherance of, but subject to, the foregoing, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon request by any Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time (at the sole cost and expense of the Grantors) in order to determine the specific items included in the Shared Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Credit Agreement Documents and the Other First Lien Documents; and

(ii) that the documents and agreements creating or evidencing the Liens on Shared Collateral securing the Credit Agreement Obligations and the Other First Lien Obligations shall, subject to the terms and conditions of Section 5.2, be in all material respects the same forms of documents as one another, except that the documents and agreements creating or evidencing the Liens securing the Other First Lien Obligations may contain additional provisions as may be necessary or appropriate to establish the intercreditor arrangements among the various separate classes of creditors holding Other First Lien Obligations and to address any Declined Lien.

(b) Notwithstanding anything in this Agreement or any other First Lien Documents to the contrary, Collateral consisting of cash and cash equivalents pledged to secure reimbursement obligations in respect of letters of credit shall solely secure and shall be applied as specified in the Credit Agreement or Other First Lien Agreement, as applicable, pursuant to which such letters of credit were issued and will not constitute Shared Collateral.

ARTICLE III.

EXISTENCE AND AMOUNTS OF LIENS AND OBLIGATIONS

Whenever any Applicable Collateral Agent or any Applicable Representative shall be required, in connection with the exercise of its rights or the performance of its obligations hereunder, to determine the existence or amount of any First Lien Obligations of any Series, or the Shared Collateral subject to any Lien securing the First Lien Obligations of any Series, it may request that such information be furnished to it in writing by each other Representative or each other Collateral Agent and shall be entitled to make such determination or not make any determination on the basis of the information so furnished; provided, however, that if a Representative or a Collateral Agent shall fail or refuse reasonably promptly to provide the requested information, the requesting Applicable Collateral Agent or Applicable Representative shall be entitled to make any such determination or not make any determination by such method as it may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of the Company. Each Applicable Collateral Agent and each Applicable Representative may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to any Grantor, any First Lien Claimholder or any other person as a result of such determination.

ARTICLE IV.

THE APPLICABLE COLLATERAL AGENT

SECTION 4.1 Authority.

(a) Notwithstanding any other provision of this Agreement, nothing herein shall be construed to impose any fiduciary or other duty on any Applicable Collateral Agent to any Non-Controlling Claimholder or give any Non-Controlling Claimholder the right to direct any Applicable Collateral Agent, except that each Applicable Collateral Agent shall be obligated to distribute proceeds of any Shared Collateral in accordance with Section 2.1 hereof.

(b) In furtherance of the foregoing, each Non-Controlling Claimholder acknowledges and agrees that the Applicable Collateral Agent shall be entitled, for the benefit of the First Lien Claimholders, to sell, transfer or otherwise dispose of or deal with any Shared Collateral as provided herein and in the First Lien Collateral Documents, as applicable, without regard to any rights to which the Non-Controlling Claimholders would otherwise be entitled as a result of the First Lien Obligations held by such Non-Controlling Claimholders. Without limiting the foregoing, each Non-Controlling Claimholder agrees that none of the Applicable Collateral Agent, the Applicable Representative or any other First Lien Claimholder shall have any duty or obligation first to marshal or realize upon any type of Shared Collateral (or any other Collateral securing any of the First Lien Obligations), or to sell, dispose of or otherwise liquidate all or any portion of such Shared Collateral (or any other Collateral securing any First Lien Obligations), in any manner that would maximize the return to the Non-Controlling Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the Non-Controlling Claimholders from such realization, sale, disposition or liquidation. Each of the First Lien Claimholders waives any claim it may now or hereafter have against any Collateral Agent or Representative of any other Series of First Lien Obligations or any other First Lien Claimholder of any other Series arising out of (i) any actions which any such Collateral Agent, Representative or any First Lien Claimholder represented by it take or omit to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral and actions with respect to the collection of any claim for all or any part of the First Lien Obligations from any account debtor, guarantor or any other party) in accordance with the First Lien Collateral Documents or any other agreement related thereto or in connection with the collection of the First Lien Obligations or the valuation, use, protection or release of any security for the First Lien Obligations; provided that nothing in this clause (i) shall be construed to prevent or impair the rights of any Collateral Agent or Representative to enforce this Agreement, (ii) any election by any Applicable Representative or any holders of First Lien Obligations, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code or (iii) subject to Section 2.5, any borrowing, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, by the Company or any of its Subsidiaries, as debtor-in-possession. Notwithstanding any other provision of this Agreement, the Applicable Collateral Agent shall not (i) accept any Shared Collateral in full or partial satisfaction of any First Lien Obligations pursuant to Section 9-620 of the Uniform Commercial Code of any jurisdiction, without the consent of each Representative representing holders of First Lien Obligations for whom such Collateral constitutes Shared Collateral or (ii) "credit bid" for or purchase (other than for cash) Shared Collateral at any public, private or judicial foreclosure upon such Shared Collateral, without the consent of each Representative representing holders of First Lien Obligations for whom such Collateral constitutes Shared Collateral.

SECTION 4.2 Power-of-Attorney.

Each Non-Controlling Representative and Collateral Agent that is not the Applicable Collateral Agent, for itself and on behalf of each other First Lien Claimholder of the Series for whom it is acting, hereby irrevocably appoints the Applicable Collateral Agent and any officer or agent of the Applicable Collateral Agent, which appointment is coupled with an interest with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Non-Controlling Representative, Collateral Agent or First Lien Claimholder, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Agreement, including the exercise of any and all remedies under each First Lien Collateral Document with respect to Shared Collateral and the execution of releases in connection therewith.

ARTICLE V.

MISCELLANEOUS

SECTION 5.1 Integration/Conflicts.

This Agreement, together with the other First Lien Documents and the First Lien Collateral Documents, represents the entire agreement of each of the Grantors and the First Lien Claimholders with respect to the subject matter hereof and thereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by any Representative, Collateral Agent or First Lien Claimholder relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. In the event of any conflict between the provisions of this Agreement and the provisions of the First Lien Documents the provisions of this Agreement shall govern and control.

SECTION 5.2 Effectiveness; Continuing Nature of this Agreement; Severability.

This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement and the First Lien Claimholders of any Series may continue, at any time and without notice to any First Lien Claimholder of any other Series, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any Grantor constituting First Lien Obligations in reliance hereon. Each Representative and each Collateral Agent, on behalf of itself and each other First Lien Claimholder represented by it, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor in possession and any receiver, trustee or similar person for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect with respect to any Representative or Collateral Agent and the First Lien Claimholders represented by such Representative or Collateral Agent and their First Lien Obligations, on the date on which there has been a Discharge of such Series of First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 2.6; provided, however, that such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

SECTION 5.3 Amendments; Waivers.

(a) No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, the Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent their rights are directly and adversely affected.

(b) Notwithstanding the foregoing, without the consent of any First Lien Claimholder, any Representative and Collateral Agent may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 5.14 of this Agreement and upon such execution and delivery, such Representative and Collateral Agent and the Other First Lien Claimholders and Other First Lien Obligations of the Series for which such Representative and Collateral Agent is acting shall be subject to the terms hereof.

(c) Notwithstanding the foregoing, without the consent of any other Representative or First Lien Claimholder, the Applicable Collateral Agent may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Other First Lien Obligations in compliance with the Credit Agreement and the other First Lien Documents.

SECTION 5.4 Information Concerning Financial Condition of the Grantors and their Subsidiaries.

The Representative and Collateral Agent and the other First Lien Claimholders of each Series shall each be responsible for keeping themselves informed of (a) the financial condition of the Grantors and their Subsidiaries and all endorsers and/or guarantors of the First Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations. The Representative and Collateral Agent and the other First Lien Claimholders of each Series shall have no duty to advise the Representative, Collateral Agent or First Lien Claimholders of any other Series of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Representative or Collateral Agent or any of the other First Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Representative, Collateral Agent or First Lien Claimholders of any other Series, it or they shall be under no obligation:

(a) to make, and such Representative and Collateral Agent and such other First Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

SECTION 5.5 Submission to Jurisdiction; Certain Waivers.

Each of the Company, each other Grantor, each Collateral Agent and each Representative, on behalf of itself and each other First Lien Claimholder represented by it, hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the First Lien Collateral Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive (subject to Section 5.5(c) below) general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) 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 and that nothing in this Agreement or any other First Lien Credit Document shall affect any right that any Collateral Agent, Representative or other First Lien Claimholder may otherwise have to bring any action or proceeding relating to this Agreement or any other First Lien Credit Document against such Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other First Lien Collateral Document in any court referred to in Section 5.5(a) (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in any such proceeding in any such court by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 5.7 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law);

(f) agrees that service as provided in Section 5.5(e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

SECTION 5.6 WAIVER OF JURY TRIAL.

EACH PARTY HERETO, THE COMPANY AND THE OTHER GRANTORS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT EACH SUCH PARTY HERETO AND THE COMPANY AND EACH OTHER GRANTOR HAVE BEEN INDUCED TO ENTER INTO OR ACKNOWLEDGE THIS AGREEMENT AND THE OTHER FIRST LIEN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS 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.

SECTION 5.7 Notices.

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile, electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or electronic mail, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto or in the Joinder Agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

SECTION 5.8 Further Assurances.

Each Representative and Collateral Agent, on behalf of itself and each other First Lien Claimholder represented by it, and the Company and each other Grantor, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any Representative and Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

SECTION 5.9 Agency Capacities.

Except as expressly provided herein, (a) Barclays Bank PLC is acting in the capacity of Initial First Lien Representative and Initial First Lien Collateral Agent solely for the Initial Credit Agreement Claimholders, (b) the Initial Other Representative and the Initial Other Collateral Agent is acting in the capacity of Representative and Collateral Agent, respectively, solely for the Initial Other First Lien Claimholders, (c) each Replacement Representative and Replacement Collateral Agent is acting in the capacity of Representative and Collateral Agent, respectively, solely for the Replacement Credit Agreement Claimholders and (d) each other Representative and each other Collateral Agent is acting in the capacity of Representative and Collateral Agent, respectively, solely for the Other First Lien Claimholders under the Other First Lien Documents for which it is the named Representative or Collateral Agent, as the case may be, in the applicable Joinder Agreement.

SECTION 5.10 GOVERNING LAW.

THIS AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).

SECTION 5.11 Binding on Successors and Assigns.

This Agreement shall be binding upon each Representative and each Collateral Agent, the First Lien Claimholders, the Company and the other Grantors, and their respective successors and assigns from time to time. If any of the Representatives and/or Collateral Agents resigns or is replaced pursuant to the applicable First Lien Documents its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

SECTION 5.12 Section Headings.

Section headings and the Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

SECTION 5.13 Counterparts.

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g., "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 5.14 Other First Lien Obligations.

(a) To the extent not prohibited by the provisions of the Credit Agreement and the other First Lien Documents, the Company may incur additional Indebtedness, which for the avoidance of doubt shall include any Indebtedness incurred pursuant to a Refinancing, and Other First Lien Obligations or Replacement Credit Agreement Obligations after the date hereof that is secured on an equal and ratable basis with the Liens (other than any Declined Liens) securing the then existing First Lien Obligations (such Indebtedness, "***Additional First Lien Debt***"). Any such Additional First Lien Debt and any Series of Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, may be secured by a Lien on a ratable basis, in each case under and pursuant to the applicable First Lien Collateral Documents of such Series, if, and subject to the condition that, the Additional First Lien Collateral Agent and Additional First Lien Representative of any such Additional First Lien Debt, acting on behalf of the holders of such Additional First Lien Debt and the holders of such Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, (such Additional First Lien Collateral Agent, Additional First Lien Representative, the holders in respect of such Additional First Lien Debt and the holders Other First Lien Obligations or other Replacement Credit Agreement Obligations, as applicable, being referred to as "Additional First Lien Claimholders"), each becomes a party to this Agreement by satisfying the conditions set forth in Section 5.14(b).

(b) In order for an Additional First Lien Representative and Additional First Lien Collateral Agent (including, in the case of a Replacement Credit Agreement, the Replacement Representative and the Replacement Collateral Agent in respect thereof) to become a party to this Agreement,

(i) such Additional First Lien Representative and such Additional First Lien Collateral Agent shall have executed and delivered an instrument substantially in the form of Exhibit A (with such changes as may be reasonably approved by each Collateral Agent and such Additional First Lien Representative and such Additional First Lien Collateral Agent, as the case may be) pursuant to which either (x) such Additional First Lien Representative becomes a Representative hereunder and such Additional First Lien Collateral Agent becomes a Collateral Agent hereunder, and such Additional First Lien Debt and such Series of Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, and the Additional First Lien Claimholders of such Series become subject hereto and bound hereby;

(ii) the Company shall have delivered to each Collateral Agent:

(a) true and complete copies of each of the Other First Lien Agreement or Replacement Credit Agreement, as applicable, and the First Lien Collateral Documents for such Series, certified as being true and correct by a Responsible Officer of the Company;

(b) a Designation substantially in the form of Exhibit B pursuant to which the Company shall (A) identify the Indebtedness to be designated as Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, and the initial aggregate principal amount or committed amount thereof, (B) specify the name and address of the Additional First Lien Collateral Agent and Additional First Lien Representative, (C) certify that such (x) Additional First Lien Debt is permitted by each First Lien Document and that the conditions set forth in this Section 5.14 are satisfied with respect to such Additional First Lien Debt and such Series of Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, and (D) in the case of a Replacement Credit Agreement, expressly state that such agreement giving rise to the new Indebtedness satisfies the requirements of a Replacement Credit Agreement and the Company elects to designate such agreement as a Replacement Credit Agreement; and

(iii) the Other First Lien Documents or Replacement Credit Agreement Documents, as applicable, relating to such Additional First Lien Debt shall provide, in a manner reasonably satisfactory to each Collateral Agent, that each Additional First Lien Claimholder with respect to such Additional First Lien Debt will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Additional First Lien Debt.

(c) Upon the execution and delivery of a Joinder Agreement by an Additional First Lien Representative and an Additional First Lien Collateral Agent, in each case, in accordance with this Section 5.14, each other Representative and Collateral Agent shall acknowledge such receipt thereof by countersigning a copy thereof, subject to the terms of this Section 5.14 and returning the same to such Additional First Lien Representative and Additional First Lien Collateral Agent, as applicable; provided that the failure of any Representative or Collateral Agent to so acknowledge or return shall not affect the status of such debt as Additional First Lien Debt if the other requirements of this Section 5.14 are complied with.

SECTION 5.15 Authorization.

By its signature, each Person executing this Agreement, on behalf of such party or Grantor but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

SECTION 5.16 No Third Party Beneficiaries/ Provisions Solely to Define Relative Rights.

The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Claimholders in relation to one another. None of the Company, any other Grantor nor any other creditor thereof shall have any rights or obligations hereunder and no such Person is an intended beneficiary or third party beneficiary hereof, except, in each case, as expressly provided in this Agreement, and none of the Company or any other Grantor may rely on the terms hereof (other than Sections 2.4 and 2.8 and Article V). Nothing in this Agreement is intended to or shall impair the obligations of any Grantor, which are absolute and unconditional, to pay the First Lien Obligations as and when the same shall become due and payable in accordance with their terms. Without limitation of any other provisions of this Agreement, the Company and each Grantor hereby (a) acknowledges that it has read this Agreement and consents hereto, (b) agrees that it will not take any action that would be contrary to the express provisions of this Agreement and (c) agrees to abide by the requirements expressly applicable to it under this Agreement.

SECTION 5.17 No Indirect Actions.

Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

SECTION 5.18 Additional Grantors.

Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any First Lien Document and which grants or purports to grant a lien on any of its assets shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a joinder agreement substantially in the form attached hereto as Exhibit C that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such First Lien Document.

[Remainder of this page intentionally left blank]

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 above written.

BARCLAYS BANK PLC,
as Initial First Lien Representative and Initial First Lien Collateral Agent

By: /s/ Christopher M. Aitkin
Name: Christopher M. Aitkin
Title: Vice President

Barclays Bank PLC
Bank Debt Management Group
745 Seventh Avenue
New York, NY 10019
Attn: Turning Point Brands Portfolio Manager: Philip Naber / Nicholas Sibayan
Tel: 212-526-7375 / 212-526-9531
Email: nicholas.sibayan@barclays.com and philip.naber@barclays.com

[Signature Page to Intercreditor Agreement]

GLAS TRUST COMPANY LLC,
as Initial Other Collateral Agent

By: /s/ Diana Gulyan
Name: Diana Gulyan
Title: AVP

GLAS TRUST COMPANY LLC
3 Second Street, Suite 206
Jersey City, NJ 07311

GLAS TRUST COMPANY LLC,
as Initial Other Representative

By: /s/ Diana Gulyan
Name: Diana Gulyan
Title: AVP

GLAS TRUST COMPANY LLC
3 Second Street, Suite 206
Jersey City, NJ 07311

[Signature Page to Intercreditor Agreement]

Acknowledged and Agreed to by:

TURNING POINT BRANDS, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

Notice to:
Turning Point Brands, Inc.
5201 Interchange Way
Louisville, KY 40229
Attention: Chief Financial Officer
Email: rlavan@tpbi.com

with a copy to

Milbank LLP
55 Hudson Yards
New York, NY 10001-2163
Attention: Mike Bellucci
Email: MBellucci@milbank.com

NORTH ATLANTIC TRADING COMPANY, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC OPERATING COMPANY, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC CIGARETTE COMPANY, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TURNING POINT BRANDS, LLC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH TOBACCO FINANCE, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

INTREPID BRANDS, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB BEAST LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB INTERNATIONAL, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SHARK, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X VENTURES, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-TECH HOLDINGS LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

SOUTH BEACH HOLDINGS LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X DISTRIBUTION LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC WRAP COMPANY LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SERVICES LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Intercreditor Agreement]

NATIONAL TOBACCO COMPANY, LP

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

RBJ SALES, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Intercreditor Agreement]

FORM OF JOINDER AGREEMENT

JOINDER NO. [ ] dated as of [ ], 20[ ] (the "***Joinder Agreement***") to the FIRST LIEN PARI PASSU INTERCREDITOR AGREEMENT dated as of [ ], [ ], (the "***Pari Passu Intercreditor Agreement***"), among Barclays Bank PLC, as Initial First Lien Representative and as Initial First Lien Collateral Agent, GLAS Trust Company LLC, as Initial Other Representative, and GLAS Trust Company LLC, as Initial Other Collateral Agent, and the additional Representatives and Collateral Agents from time to time a party thereto, and acknowledged and agreed to by [Borrower] (the ***"Company***") and the other Grantors signatory thereto.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

B. As a condition to the ability of the Company to incur [Other First Lien Obligations][Replacement Credit Agreement Obligations under the Replacement Credit Agreement] and to secure such [Other First Lien Obligations][Replacement Credit Agreement Obligations] with the liens and security interests created by the [Other First Lien Collateral Documents][Replacement Credit Agreement Collateral Documents], the Additional First Lien Representative in respect thereof is required to become a Representative and the Additional First Lien Collateral Agent in respect thereof is required to become a Collateral Agent and the First Lien Claimholders in respect thereof are required to become subject to and bound by, the Pari Passu Intercreditor Agreement. Section 5.14 of the Pari Passu Intercreditor Agreement provides that such Additional First Lien Representative may become a Representative, such Additional First Lien Collateral Agent may become a Collateral Agent and such Additional First Lien Claimholders may become subject to and bound by the Pari Passu Intercreditor Agreement, pursuant to the execution and delivery by the Additional First Lien Representative and the Additional First Lien Collateral Agent of an instrument in the form of this Joinder Agreement and the satisfaction of the other conditions set forth in Section 5.14 of the Pari Passu Intercreditor Agreement. The undersigned Additional First Lien Representative (the "***New Representative***") and Additional First Lien Collateral Agent (the "***New Collateral Agent***") are executing this Joinder Agreement in accordance with the requirements of the Pari Passu Intercreditor Agreement.

Accordingly, the New Representative and the New Collateral Agent agree as follows:

SECTION 1. In accordance with Section 5.14 of the Pari Passu Intercreditor Agreement, (i) the New Representative and the New Collateral Agent by their signatures below become a Representative and a Collateral Agent respectively, under, and the related Additional First Lien Debt and Additional First Lien Claimholders become subject to and bound by, the Pari Passu Intercreditor Agreement with the same force and effect as if the New Representative and New Collateral Agent had originally been named therein as a Representative or a Collateral Agent, respectively, and hereby agree to all the terms and provisions of the Pari Passu Intercreditor Agreement applicable to them as Representative, Collateral Agent and Additional First Lien Claimholders, respectively.

SECTION 2. Each of the New Representative and New Collateral Agent represent and warrant to each other Collateral Agent, each other Representative and the other First Lien Claimholders, individually, that (i) it has full power and authority to enter into this Joinder Agreement, in its capacity as [agent], (ii) this Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability, and (iii) the First Lien Documents relating to such Additional First Lien Debt provide that, upon the New Representative's and the New Collateral Agent's entry into this Joinder Agreement, the Additional First Lien Claimholders represented by them will be subject to and bound by the provisions of the Pari Passu Intercreditor Agreement.

SECTION 3. This Joinder Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Joinder Agreement shall become effective when each Collateral Agent and Representative shall have received a counterpart of this Joinder Agreement that bears the signatures of the New Representative and the New Collateral Agent. Delivery of an executed signature page to this Joinder Agreement by facsimile transmission or other electronic means shall be effective as delivery of a manually signed counterpart of this Joinder Agreement.

SECTION 4. Except as expressly supplemented hereby, the Pari Passu Intercreditor Agreement shall remain in full force and effect.

SECTION 5. **THIS JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS JOINDER AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

SECTION 6. Any provision of this Joinder Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and in the Pari Passu Intercreditor Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 5.7 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Representative and the New Collateral Agent shall be given to them at their respective addresses set forth below their signatures hereto.

SECTION 8. Sections 5.8 and 5.9 of the Pari Passu Intercreditor Agreement are hereby incorporated herein by reference.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the New Representative and New Collateral Agent have duly executed this Joinder Agreement to the Pari Passu Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE], as
[ ] for the holders of [ ],

By: _____
Name:
Title:

Address for notices:

_____

_____

attention
of: _____
Telecopy: _____

[NAME OF NEW COLLATERAL AGENT], as
[ ] for the holders of [ ],

By: _____
Name:
Title:

Address for notices:

_____

_____

attention
of: _____
Telecopy: _____

Receipt acknowledged by:
BARCLAYS BANK PLC,
as Initial First Lien Representative and Initial First Lien Collateral Agent

By: _____
Name:
Title:

GLAS Trust Company LLC,
as Initial Other Representative

By: _____
Name:
Title:

GLAS Trust Company LLC,
as Initial Other Collateral Agent

By: _____
Name:
Title:

[OTHERS AS NEEDED]

[FORM OF]
DEBT DESIGNATION

Reference is made to the First Lien Pari Passu Intercreditor Agreement dated as of [_____], 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "***Pari Passu Intercreditor Agreement***") among Barclays Bank PLC, as Initial First Lien Representative and Initial First Lien Collateral Agent, GLAS Trust Company LLC, as Initial Other Representative, and GLAS Trust Company LLC, as Initial Other Collateral Agent, and the additional Representatives and Collateral Agents from time to time a party thereto, and acknowledged and agreed to by Turning Point Brands, Inc. (the ***"Company***") and the other Grantors signatory thereto. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Pari Passu Intercreditor Agreement. This Debt Designation is being executed and delivered in order to designate [Additional First Lien Debt][Replacement Credit Agreement Obligations] entitled to the benefit and subject to the terms of the Pari Passu Intercreditor Agreement.

The undersigned, the duly appointed [*specify title*] of the Company hereby certifies on behalf of the Company that:

(a) [*insert name of the Company or other Grantor*] intends to incur Indebtedness in the initial aggregate [principal/committed amount] of [ ] pursuant to the following agreement: [*describe [credit agreement, indenture, other agreement giving rise to Additional First Lien Debt][Replacement Credit Agreement* ("***New Agreement***")*]]* which will be [Other First Lien Obligations][Replacement Credit Agreement Obligations];

(b) (i) the name and address of the [Additional First Lien Representative for the Additional First Lien Debt and the related Other First Lien Obligations][Replacement Representative for the Replacement Credit Agreement] is:

_____

_____

Telephone: _____

Fax: _____

(ii) the name and address of the Additional First Lien Collateral Agent for the Additional First Lien Debt and the Other First Lien Obligations or Replacement Credit Agreement Obligations, as applicable, is:

_____

_____

Telephone: _____

Fax: _____

[and]

(a) such Additional First Lien Debt is permitted by each First Lien Document and the conditions set forth in Section 5.14 of the Pari Passu Intercreditor Agreement are satisfied with respect to such Additional First Lien Debt **[*insert for Replacement Credit Agreements only:* ;** and

(b) the New Agreement satisfies the requirements of a Replacement Credit Agreement and is hereby designated as a Replacement Credit Agreement].

IN WITNESS WHEREOF, the Company has caused this Debt Designation to be duly executed by the undersigned officer as of _____, 20____.

TURNING POINT BRANDS, INC.

By: _____
Name:
Title:

FORM OF GRANTOR JOINDER AGREEMENT

GRANTOR JOINDER AGREEMENT NO. [ ] "this "**Grantor Joinder Agreement**") dated as of [ ], 20[ ] to the PARI PASSU INTERCREDITOR AGREEMENT dated as of [ ], 2021 (the "**Pari Passu Intercreditor Agreement**"), among Barclays Bank PLC, as Initial First Lien Representative and Initial First Lien Collateral Agent, and the additional Representatives and Collateral Agents from time to time a party thereto, and acknowledged and agreed to by Turning Point Brands, Inc., a [Delaware] corporation (the "**Company**") and certain subsidiaries of the Company (each a "**Grantor**").

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

The undersigned, [_____], a [_____], (the "New Grantor") wishes to acknowledge and agree to the Pari Passu Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 5.16 thereof and to acquire and undertake the rights and obligations of a Grantor thereunder.

Accordingly, the New Grantor agrees as follows for the benefit of the Representatives, the Collateral Agents and the First Lien Claimholders:

Section 1. Accession to the Pari Passu Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to the Pari Passu Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 5.16 thereof, (b) agrees to all the terms and provisions of the Pari Passu Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Pari Passu Intercreditor Agreement. This Grantor Joinder Agreement supplements the Pari Passu Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 5.18 of the Pari Passu Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Representative, each Collateral Agent and to the First Lien Claimholders that (a) it has full power and authority to enter into this Grantor Joinder Agreement, in its capacity as Grantor and (b) this Grantor Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Grantor Joinder Agreement.

Section 3. Counterparts. This Grantor Joinder Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Grantor Joinder Agreement or any document or instrument delivered in connection herewith by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Grantor Joinder Agreement or such other document or instrument, as applicable.

Section 4. Section Headings. Section heading used in this Grantor Joinder Agreement are for convenience of reference only and are not to affect the construction hereof or to be taken in consideration in the interpretation hereof.

Section 5. Benefit of Agreement. The agreements set forth herein or undertaken pursuant hereto are for the benefit of, and may be enforced by, any party to the Pari Passu Intercreditor Agreement subject to any limitations set forth in the Pari Passu Intercreditor Agreement with respect to the Grantors.

Section 6. Governing Law. **THIS GRANTOR JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS GRANTOR JOINDER AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

Section 7. Severability. In case any one or more of the provisions contained in this Grantor Joinder Agreement should be held invalid, illegal or unenforceable in any respect, none of the parties hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Pari Passu Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto 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 8. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 5.7 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature hereto, which information supplements Section 5.7 of the Pari Passu Intercreditor Agreement.

IN WITNESS WHEREOF, the New Grantor has duly executed this Grantor Joinder Agreement to the Pari Passu Intercreditor Agreement as of the day and year first above written.

[_____]

By _____
Name:
Title:

Address: _____
_____
_____

Exhibit 10.3

Execution Version

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIEN AND SECURITY INTEREST GRANTED TO THE COLLATERAL AGENT PURSUANT TO THIS SECURITY AGREEMENT AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL AGENT HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE "PARI PASSU INTERCREDITOR AGREEMENT" (AS DEFINED IN THE CREDIT AGREEMENT REFERRED TO BELOW). IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE PARI PASSU INTERCREDITOR AGREEMENT AND THIS SECURITY AGREEMENT, THE TERMS OF THE PARI PASSU INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL; PROVIDED HOWEVER, THE CREDIT AGREEMENT (AS DEFINED BELOW) AND THIS SECURITY AGREEMENT SHALL GOVERN AND CONTROL THE RIGHTS, POWERS, PROTECTIONS, IMMUNITIES, AND INDEMNITIES OF THE COLLATERAL AGENT.

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended or modified from time to time, the "Security Agreement") is entered into as of February 11, 2021 by and among Turning Point Brands, Inc., a Delaware corporation (the "Company"), the other parties named on the signature pages hereto (together with the Company, the "Grantors", and each a "Grantor"), and Barclays Bank PLC, in its capacity as collateral agent (the "Collateral Agent") for the Lenders and L/C Issuers party to the Credit Agreement referred to below.

PRELIMINARY STATEMENT

The Grantors, Barclays Bank PLC, in its capacity as the administrative agent (the "Administrative Agent"), the Collateral Agent, the Lenders and the L/C Issuers are entering into a Credit Agreement dated as of February 11, 2021 (as it may be amended or modified from time to time, the "Credit Agreement"). Each Grantor is entering into this Security Agreement in order to induce the Lenders and L/C Issuers to enter into and extend credit to the Borrowers under the Credit Agreement and to secure the Secured Obligations that it has agreed to guarantee pursuant to the Guarantee Agreement.

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Lenders and the L/C Issuers, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC (and if defined in more than one article of the UCC shall have the meaning specified in Article 9 thereof).

1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"Assigned Contracts" means, collectively, all of the Grantors' rights and remedies under, and all moneys and claims for money due or to become due to any Grantor under all contracts and other agreements between any Grantor and any party other than the Collateral Agent or any Lender and all amendments, supplements, extensions, and renewals thereof including all rights and claims of such Grantor now or hereafter existing: (a) under any insurance, indemnities, warranties, and guarantees provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing agreements; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers and privileges thereunder.

"Collateral" shall have the meaning set forth in Article II.

"Commercial Tort Claims" means "commercial tort claims" as defined in Article 9 of the UCC and shall include, without limitation, the existing commercial tort claims of each Grantor now or hereafter set forth in Exhibit C attached hereto, as amended or supplemented to reflect such additional Commercial Tort Claims.

"Control" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"Copyrights" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights in any of the foregoing throughout the world.

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

"Exhibit" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced. References to any Exhibit shall mean such Exhibit as amended, supplemented or otherwise modified from time to time.

"Licenses" means, with respect to any Person, (a) any and all licensing agreements or arrangements granting rights in and to its Patents, Copyrights, or Trademarks, (b) all of such Person's right, title, and interest in and to all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

"Patents" means, with respect to any Person, all of such Person's right, title, and interest in and to: (a) any and all U.S. patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights in any of the foregoing throughout the world.

"Pledged Collateral" means all Instruments, Securities and other Investment Property of the Grantors, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement, but excluding any Excluded Assets.

"Receivables" means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

"Section" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"Secured Obligations" means the Obligations.

"Stock Rights" means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Equity Interest constituting Collateral, any right to receive an Equity Interest and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Equity Interest.

"Trademarks" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights in any of the foregoing throughout the world.

"UCC" means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Collateral Agent's or any Lender's Lien on any Collateral.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II
GRANT OF SECURITY INTEREST

Each Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the ratable benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Copyrights, Patents, Trademarks and Licenses;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles;

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property;

(xii) all cash or cash equivalents;

(xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;

(xiv) all Deposit Accounts with any bank or other financial institution;

(xv) all Commercial Tort Claims;

(xvi) all securities accounts with any financial institution or securities intermediary;

(xvii) all Assigned Contracts; and

(xviii) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the prompt and complete payment and performance of the Secured Obligations.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any Excluded Assets.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the Lenders that:

3.1. Title, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Permitted Liens, and has full power and authority to grant to the Collateral Agent the security interest in the Collateral pursuant hereto. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit F, the Collateral Agent will have a fully perfected first priority security interest in that Collateral of the Grantor in which a security interest may be perfected by filing, subject only to Permitted Liens.

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of such Grantor, its state or other jurisdiction of organization, the organizational number issued to it by its state or other jurisdiction of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

3.4. Exact Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization.

3.5. [Reserved].

3.6. Deposit Accounts and Securities Accounts. All of such Grantor's Deposit Accounts and Securities Accounts are listed on Exhibit B.

3.7. Intellectual Property. Such Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright, except as set forth in Exhibit D.

3.8. Filing Requirements. As of the date hereof, none of the Collateral owned by it with a value exceeding $5,000,000 for any individual item of Collateral is of a type for which security interests or liens may be perfected by filing under any federal statute except for Patents, Trademarks and Copyrights held by such Grantor and described in Exhibit D.

3.9. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Secured Parties and (b) as otherwise permitted under the Loan Documents.

3.10. Pledged Collateral.

(a) Exhibit E sets forth a complete and accurate list of all Pledged Collateral owned by such Grantor as of the date hereof. Such Grantor is the direct, sole beneficial owner and sole holder of record of the Pledged Collateral listed on Exhibit E as being owned by it, free and clear of any Liens, except for the security interest granted to the Collateral Agent for the benefit of the Secured Parties hereunder and Permitted Liens. Such Grantor further represents and warrants that all Pledged Collateral owned by it constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Pledged Collateral) duly authorized, validly issued, are fully paid and non-assessable.

(b) In addition, (i) none of the Pledged Collateral owned by it has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject, (ii) no options, warrants, calls or commitments of any character whatsoever (A) exist relating to such Pledged Collateral or (B) obligate the issuer of any Equity Interest included in the Pledged Collateral to issue additional Equity Interests, and (iii) no consent, approval, authorization, or other action by, and no giving of notice to or filing with, any Governmental Authority or any other Person is required for the pledge by such Grantor of such Pledged Collateral pursuant to this Security Agreement, or for the exercise by the Collateral Agent of the voting or other rights provided for in this Security Agreement or for the remedies in respect of the Pledged Collateral pursuant to this Security Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(c) Except as set forth in Exhibit E, such Grantor owns 100% of the issued and outstanding Equity Interests which constitute Pledged Collateral owned by it.

ARTICLE IV
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

4.1. General.

(a) Collateral Records. Such Grantor shall maintain complete and accurate (in all material respects) books and records with respect to the Collateral owned by it, and furnish to the Collateral Agent, such reports relating to such Collateral as the Collateral Agent shall from time to time request.

(b) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Collateral Agent to file all financing statements and other documents as may from time to time be reasonably required by the Collateral Agent in order to maintain a perfected security interest in the Collateral owned by such Grantor with the priority required by the Credit Agreement. Any financing statement so authorized may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon request. Such Grantor also ratifies its authorization for the Collateral Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Notwithstanding the foregoing authorizations, each Grantor agrees to prepare, record and file, at its own expense, financing statements (and amendments or continuation statements when applicable) with respect to Collateral now existing or hereafter created meeting the requirements of the applicable state law in such manner and in such jurisdictions are necessary to prefect and maintain a perfected Lien in the Collateral, and to timely deliver a file-stamped copy of each filed financing statement or other evidence of filing to the Collateral Agent. Notwithstanding anything herein to the contrary, the Collateral Agent shall have no responsibility for preparing, recording, filing, re-recording, or re-filing any financing statement, perfection statement, continuation statement or other instrument in any public office or for otherwise ensuring the perfection or maintenance of any security interest granted pursuant to this Security Agreement, the Credit Agreement or any Loan Document.

(c) Other Financing Statements. Such Grantor shall not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except for financing statements (i) naming the Collateral Agent on behalf of the Secured Parties as the secured party, and (ii) in respect to Permitted Liens. Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed by the Collateral Agent without the prior written consent of the Collateral Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the UCC.

4.2. Delivery of Instruments, Securities, Chattel Paper and Documents. Each Grantor shall (a) deliver to the Collateral Agent immediately upon execution of this Security Agreement and from time-to-time as required herein the originals of all Securities and Instruments constituting Collateral owned by it (if any then exist) with a value in excess of $5,000,000 individually, (b) hold in trust for the Collateral Agent upon receipt and upon request deliver to the Collateral Agent any other Securities and Instruments constituting Collateral and (c) upon the Collateral Agent's request, deliver to the Collateral Agent (and thereafter hold in trust for the Collateral Agent upon receipt and immediately deliver to the Collateral Agent) any Document evidencing or constituting Collateral. Such Grantor hereby authorizes the Collateral Agent to attach each Amendment to this Security Agreement and agrees that all additional Collateral owned by it set forth in such Amendments shall be considered to be part of the Collateral.

4.3. Pledged Collateral.

(a) Exercise of Rights in Pledged Collateral.

(i) Without in any way limiting the foregoing and subject to clause (ii) below, such Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral owned by it for all purposes not inconsistent with this Security Agreement, the Credit Agreement or any other Loan Document.

(ii) Such Grantor shall permit the Collateral Agent or its nominee at any time during the continuation of an Event of Default, after prior written notice to any Grantor, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Equity Interest or Investment Property constituting such Pledged Collateral as if it were the absolute owner thereof.

(iii) Unless an Event of Default under the Credit Agreement has occurred and is ongoing, such Grantor shall be entitled to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Collateral owned by it to the extent not in violation of the Credit Agreement.

4.4. Uncertificated Pledged Collateral. Such Grantor shall permit the Collateral Agent from time to time to direct the appropriate issuers of uncertificated securities or other types of Pledged Collateral owned by it not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Pledged Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Collateral Agent granted pursuant to this Security Agreement.

4.5. Intellectual Property.

(a) Such Grantor shall take all actions necessary and appropriate to maintain and pursue each material application, to obtain the relevant registration and to maintain the registration of each of its material Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of non-contestability and opposition and interference and cancellation proceedings, except to the extent the failure to so is not prohibited by the Credit Agreement.

(b) Such Grantor shall, unless it reasonably determines that such Patent, Trademark or Copyright is not material to the conduct of its business or operations, promptly enforce its rights in any such material Patent, Trademark or Copyright, including suing for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions where the Grantor, in the exercise of its reasonable business judgment, determines that such action is appropriate, or if during the existence of an Event of Default, as the Collateral Agent shall deem appropriate under the circumstances to protect such material Patent, Trademark or Copyright.

4.6. Commercial Tort Claims. Such Grantor shall promptly, and in any event within 30 days after a Commercial Tort Claim exceeding $5,000,000 is filed in a court of competent jurisdiction, notify the Collateral Agent and, unless the Collateral Agent otherwise consents, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit G hereto, granting to Collateral Agent a first priority security interest in such Commercial Tort Claim and in the proceeds thereof, and amending and supplementing Exhibit C.

4.7. Federal, State or Municipal Claims. Such Grantor shall promptly notify the Collateral Agent of any Collateral which constitutes a claim in excess of $5,000,000 against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.8. No Interference. Such Grantor agrees that it shall not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

4.9. Change of Name or Location. Such Grantor shall notify the Collateral Agent in writing within 30 days of each of the following (a) a change of its name as it appears in official filings in the state or jurisdiction of its incorporation or organization, (b) a change of its chief executive office, (c) a change of the type of entity that it is or (d) a change of its state or jurisdiction of incorporation or organization, in each case, and shall take any action necessary and appropriate in connection therewith (including any action to continue the perfection of any Liens in favor of the Collateral Agent, on behalf of Secured Parties, in any Collateral).

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

5.1. Remedies.

(a) Upon the occurrence of an Event of Default which is continuing, the Collateral Agent may, and at the written request of the Required Lenders shall, exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; *provided that,* this Section 5.1 shall not be understood to limit any rights or remedies available to the Collateral Agent and the Secured Parties prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Agent may deem commercially reasonable; and

(iv) concurrently upon written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof.

(b) The Collateral Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance shall not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Grantor hereby expressly releases.

(d) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) Notwithstanding the foregoing, neither the Collateral Agent nor the Lenders shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(f) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (a) above. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so. The Collateral Agent shall incur no liability as a result of the sale (whether public or private) of the Collateral or any part thereof at any sale pursuant to this Agreement conducted in a commercially reasonable manner. Each of the Grantors and Secured Parties hereby waive any claims against the Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such sale (whether public or private) was less than the price that might have been obtained otherwise, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, so long as such sale is conducted in a commercially reasonable manner. Each of the Grantors and Secured Parties hereby agree that in respect of any sale of any of the Collateral pursuant to the terms hereof, Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any governmental authority or official, and the Grantors and Secured Parties further agree that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to the Grantors or Secured Parties for any discount allowed by reason of the fact that the Collateral or any part thereof is sold in compliance with any such limitation or restriction.

5.2. Grantor's Obligations Upon Event of Default. Upon the request of the Collateral Agent after the occurrence of an Event of Default which is continuing, each Grantor shall:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at a Grantor's premises or elsewhere;

(b) permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Collateral Agent may request, all in form and substance satisfactory to the Collateral Agent, and furnish to the Collateral Agent, or cause an issuer of Pledged Collateral to furnish to the Collateral Agent, any information regarding the Pledged Collateral in such detail as the Collateral Agent may specify; and

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Collateral Agent to consummate a public sale or other disposition of the Pledged Collateral.

5.3. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V solely during such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (a) grants to the Collateral Agent, to the extent that it has the right to do so and subject to any pre-existing rights of third parties, for the benefit of the Secured Parties, an irrevocable, assignable nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any intellectual property rights now owned or hereafter owned or licensed by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, for the avoidance of doubt solely to the extent necessary or advisable (as determined in the Collateral Agent's reasonable discretion) for the Collateral Agent to exercise the rights and remedies under this Article V and (b) irrevocably agrees that the Collateral Agent may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Collateral Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein, provided in each of the foregoing grants that, with respect to Trademarks, such Grantor shall have such rights of quality control solely as are necessary under applicable law to maintain the validity and enforceability of such Trademarks.

ARTICLE VI
ATTORNEY IN FACT; PROXY

6.1. Authorization for Collateral Agent to Take Certain Action.

(a) Each Grantor irrevocably authorizes the Collateral Agent at any time and from time to time as necessary and appropriate (in the discretion of the Collateral Agent) and appoints the Collateral Agent as its attorney in fact (i) to file financing statements necessary or desirable in the Collateral Agent's reasonable discretion to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (ii) to endorse and collect any cash proceeds of the Collateral, (iii) to file any financing statement with respect to the Collateral and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Collateral Agent in its reasonable discretion deems necessary and appropriate to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (iv) to apply the proceeds of any Collateral received by the Collateral Agent to the Secured Obligations as provided in Section 6.4, (v) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens that are permitted by the Loan Documents), (vi) to contact Account Debtors for any reason, (vii) to demand payment or enforce payment of the Receivables in the name of the Collateral Agent or such Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (viii) to sign such Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of the Grantor, assignments and verifications of Receivables, (ix) to exercise all of such Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (x) to settle, adjust, compromise, extend or renew the Receivables, (xi) to settle, adjust or compromise any legal proceedings brought to collect Receivables, (xii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (xiii) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (xiv) to change the address for delivery of mail addressed to such Grantor to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (xv) to do all other acts and things reasonably necessary to carry out this Security Agreement; *provided that,* this authorization shall not relieve such Grantor of any of its Secured Obligations under this Security Agreement or under the Credit Agreement.

(b) The powers conferred on the Collateral Agent, for the benefit of Secured Parties, under this Section 6.1 are solely to protect the Collateral Agent's interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent agrees that, except for the powers granted in Section 6.1(a)(i) and (iii), it shall not exercise any power or authority granted to it unless an Event of Default has occurred and is continuing.

6.2. Proxy. EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.1 ABOVE) WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF ANY OF THE PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY OF THE PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

6.3. Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.13. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE COLLATERAL AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, NOR ANY OF THEIR OR THEIR AFFILIATES' RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO.

6.4. Application of Proceeds. Subject to the provisions of the Intercreditor Agreement, at such intervals as may be mutually agreed in writing upon by the Company and the Collateral Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's election, the Collateral Agent may, notwithstanding the provisions of Section 2.05 of the Credit Agreement, apply all or any part of the net proceeds of the Collateral realized through the exercise by the Collateral Agent of its remedies hereunder and any proceeds of the guarantee set forth in the Guarantee Agreement, in payment of the Secured Obligations in the following order:

first, to payment of that portion of the Obligations constituting fees, expenses and other amounts payable to the Administrative Agent and the Collateral Agent in their capacities as such;

second, to payment of that portion of the Obligations constituting fees and other amounts payable to the Lenders and the L/C Issuers (including fees and charges for attorneys who may be employees of any Lender or L/C Issuers) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause *second* payable to them;

third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees, interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause *third* payable to them;

fourth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Section 2.05(b) of the Credit Agreement and to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements (other than Excluded Swap Obligations) and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause *fourth* payable by them; and

last, the balance, if any, after payment in full of all Obligations to the Borrower or as otherwise required by law.

ARTICLE VII
[RESERVED]

ARTICLE VIII
GENERAL PROVISIONS

8.1. Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Section 10.02 of the Credit Agreement, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any Secured Parties arising out of the repossession, retention or sale of the Collateral. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any Secured Parties, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

8.2. Limitation on Collateral Agent's and Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each Secured Party shall comply with the standard of care set forth herein with respect to the Collateral in its possession or under its control. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

8.3. Compromises and Collection of Collateral. The Grantors and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent in its sole discretion may determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

8.4. Performance of Debtor Obligations. Without having any obligation to do so, the Collateral Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and the Grantors shall reimburse the Collateral Agent for any amounts paid by the Collateral Agent pursuant to this Section 8.4. The Grantors' obligation to reimburse the Collateral Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.3 or 8.7 will cause irreparable injury to the Collateral Agent and the Secured Parties, that the Collateral Agent and Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the Secured Parties to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantors.

8.6. Dispositions Not Authorized. No Grantor is authorized to sell or otherwise dispose of the Collateral to the extent prohibited herein, the Credit Agreement or in any other Security Document.

8.7. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Collateral Agent or any Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Collateral Agent under Section 10.01 of the Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Collateral Agent and the Secured Parties until the Secured Obligations have been paid in full.

8.8. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of applicable law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

8.9. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.10. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the Secured Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, hereunder.

8.11. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.12. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.13. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations (other than contingent indemnity obligations for which no claim has been made) have been indefeasibly paid and performed in full and no commitments of the Secured Parties which would give rise to any Secured Obligations are outstanding.

8.14. Entire Agreement. This Security Agreement and the other Loan Documents embody the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersede all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

8.15. **CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

8.16. **CONSENT TO JURISDICTION. EACH PARTY TO THIS SECURITY AGREEMENT HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.**

8.17. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION**.

8.18. Counterparts. This Security Agreement may be executed in any number of counterparts, including in electronic .pdf format, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement. All notices, approvals, consents, requests and any communications hereunder must be in writing, provided that any communications sent to the Collateral Agent hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Collateral Agent by the authorized representative), in English. Each Grantor and Secured Party agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Collateral Agent, including without limitation the risk of Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

ARTICLE IX
THE COLLATERAL AGENT

9.1. Barclays Bank PLC is executing this Security Agreement, not in its individual capacity but solely in its capacity as Collateral Agent under that certain Credit Agreement dated as of February 11, 2021. Barclays Bank PLC has been appointed Collateral Agent for the Secured Parties hereunder pursuant to Article IX of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Secured Parties to the Collateral Agent pursuant to the Credit Agreement, and that the Collateral Agent has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in Article IX of the Credit Agreement. In acting hereunder, the Collateral Agent shall be entitled to all the rights, powers, protections, immunities, and indemnities under the Credit Agreement as if the same were set forth herein, *mutatis mutandis* and shall survive any termination of this Security Agreement. The permissive rights, benefits and powers granted to the Collateral Agent hereunder shall not be construed as duties. All discretionary acts hereunder (including the exercise of any remedies) shall be taken by the Collateral Agent pursuant to the terms of the Credit Agreement. The Collateral Agent shall be entitled to exercise its rights, powers and duties hereunder through agents, experts or designees and shall not be responsible for the acts of any such parties appointed with due care.

9.2. The Collateral Agent shall not be responsible in any manner whatsoever for and makes no representation as to the validity or sufficiency of this Security Agreement or for or in respect of the recitals contained herein, all of which recitals are made solely by the applicable Grantor.

9.3. The powers conferred on the Collateral Agent hereunder are solely to protect its security interest in the Collateral. Notwithstanding any provision contained in this Security Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it hereunder and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty or liability as to any Collateral or as to the taking of any necessary steps to exercise or preserve any rights against prior parties or any other rights, privileges or powers pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 10.04 of the Credit Agreement.

9.4. The Collateral Agent shall not be responsible for or make any representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Liens. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting, monitoring or maintaining the perfection of any Lien or security interest in the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise maintaining the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for taking any action to protect against any diminution in value of the Collateral, but, in each case (A) subject to the requirement that the Collateral Agent may not act or omit to take any action if such act or omission would constitute gross negligence or willful misconduct and (B) the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Secured Obligations.

9.5. Nothing in this Security Agreement constitutes the Collateral Agent as an agent, trustee or fiduciary of the Company or any Grantor or as trustee or fiduciary for the Secured Party under the Credit Agreement. The relationship between the Collateral Agent and the Secured Parties is that of principal and agent only. The Collateral Agent is not responsible or liable for the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Company, any Grantor or any other Person in or in connection with the Credit Agreement, this Security Agreement or any other Loan Document or the transactions contemplated herein or therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Credit Agreement, this Security Agreement or any other Loan Document.

9.6. The protections afforded to the Collateral Agent pursuant to this Article IX shall be in addition to, and not in limitation of, any related provisions set forth in the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Security Agreement as of the date first above written.

GRANTORS:

TURNING POINT BRANDS, INC.

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC TRADING COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC OPERATING COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC CIGARETTE COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TURNING POINT BRANDS, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

NATIONAL TOBACCO FINANCE, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman

Title: Senior Vice President, General Counsel and Secretary

INTREPID BRANDS, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB BEAST LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB INTERNATIONAL, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SHARK, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X VENTURES, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

NU-TECH HOLDINGS LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

SOUTH BEACH HOLDINGS LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X DISTRIBUTION LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC WRAP COMPANY LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SERVICES LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NATIONAL TOBACCO COMPANY, LP

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

RBJ SALES, INC.

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

Collateral Agent:

BARCLAYS BANK PLC, as Collateral Agent

By: /s/ Christopher M. Aitkin
Name: Christopher M. Aitkin
Title: Vice President

[Signature Page to Security Agreement]

EXHIBIT A

Type and Jurisdiction of Organization, and Principal Location

---

EXHIBIT B

Deposit Accounts and Securities Accounts

EXHIBIT C

Commercial Tort Claims

EXHIBIT D

Intellectual Property, Filing Requirements

EXHIBIT E

Pledged Collateral

EXHIBIT F

Title, Perfection, Priority

EXHIBIT G

Amendment

This Amendment, dated _____, ___ is delivered pursuant to Section [4.2] [4.6] of the Security Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Security Agreement.

RECITALS

Section 1. [Additional Collateral]. The undersigned hereby certifies that the representations and warranties in Article III of the Security Agreement are and continue to be true and correct. The undersigned further agrees that this Amendment may be attached to that certain Pledge and Security Agreement, dated _____ __, 20[●], between the undersigned, as the Grantors, and Barclays Bank PLC, as the Collateral Agent (as amended or modified from time to time prior to the date hereof, the "Security Agreement") and that the Collateral listed on Schedule I to this Amendment shall be and become a part of the Collateral referred to in said Security Agreement and shall secure all Secured Obligations referred to in the Security Agreement.

Section 2. CHOICE OF LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3. CONSENT TO JURISDICTION. EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY SUBMITS TO THE NON EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE SECURITY AGREEMENT OR ANY OTHER [SECURITY DOCUMENT] AND EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.

Section 4. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE SECURITY AGREEMENT, ANY OTHER [SECURITY DOCUMENT] OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 5. Counterparts. This Amendment may be executed in any number of counterparts, including in electronic .pdf format, all of which taken together with the Security Agreement, shall constitute one agreement, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Amendment. All notices, approvals, consents, requests and any communications hereunder must be in writing, provided that any communications sent to the Collateral Agent hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Collateral Agent by the authorized representative), in English. Each Grantor hereto agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Collateral Agent, including without limitation the risk of Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

By: _____
Name: _____
Title: _____

SCHEDULE I TO AMENDMENT

COMMERCIAL TORT CLAIMS

Name of Grantor	Description of Claim	Parties	Case Number; Name of Court where Case was Filed

Exhibit 10.4

Execution Version

GUARANTY AGREEMENT

made among

TURNING POINT BRANDS, INC.

and certain of its Subsidiaries

and

BARCLAYS BANK PLC,
as Administrative Agent and Collateral Agent

Dated as of February 11, 2021

TABLE OF CONTENTS

GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of February 11, 2021, among each of the signatories hereto designated as a Guarantor on the signature pages hereto (together with any other entity that may become a party hereto as a Guarantor as provided herein, (each a "Guarantor" and collectively, the "Guarantors")) and Barclays Bank PLC, as Administrative Agent and Collateral Agent (in such capacity and together with its successors and assigns in such capacity, the "Agent") for (i) the banks and other financial institutions or entities (the "Lenders") from time to time parties to the Credit Agreement, dated as of February 11, 2021 (as amended, restated, supplemented or otherwise modified or replaced from time to time, the "Credit Agreement"), among Turning Point Brands, Inc., a Delaware corporation (the "Borrower"), the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders"), Barclays Bank PLC, as the Agent, and (ii) the other Guaranteed Parties (as defined herein).

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, the Lenders and L/C Issuer have severally agreed to make Credit Extensions to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Guarantor;

WHEREAS, the proceeds of the Credit Extensions under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Guarantors in connection with the operation of their respective businesses;

WHEREAS, the Borrower and the other Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the Credit Extensions under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders and L/C Issuer to make their Credit Extensions to the Borrower under the Credit Agreement that the Guarantors shall have executed and delivered this Guaranty (as defined herein) to the Agent for the benefit of the Guaranteed Parties.

NOW, THEREFORE, in consideration of the premises and to induce the Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders and L/C Issuer to make their respective Credit Extensions to the Borrower thereunder and to induce the Hedge Banks and Cash Management Banks to enter into Secured Hedge Agreements and Secured Cash Management Agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Guarantor hereby agrees with the Agent, for the benefit of the Guaranteed Parties, as follows:

SECTION 1 DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, all terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

(a) The following terms shall have the following meanings:

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

"Credit Agreement Obligations" shall mean (i) all principal of and interest (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any other Guarantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and premium (if any) on all loans made pursuant to the Credit Agreement, (ii) all reimbursement obligations (if any) and interest thereon (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any other Guarantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) with respect to any letter of credit or similar instruments issued pursuant to the Credit Agreement and (iii) all guarantee obligations, fees, expenses and all other Guaranteed Obligations under the Credit Agreement and the other Loan Documents (other than any Guaranteed Obligations owing to any Hedge Bank or Cash Management Bank in its capacity as such with respect any Secured Hedge Agreement or Secured Cash Management Agreement).

"Discharge of the Guaranteed Obligations" shall mean and shall have occurred when (i) all Guaranteed Obligations shall have been paid in full in cash and all other obligations under the Loan Documents shall have been performed (other than (a) those expressly stated to survive termination and (b) contingent obligations as to which no claim has been asserted, and (c) obligations and liabilities under Secured Cash Management Agreements and Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Banks or Cash Management Banks shall have been made) and (ii) no Letters of Credit shall be outstanding (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the L/C Issuer shall have been made) and (iii) all Commitments shall have terminated or expired.

"Guaranty" shall mean this Guaranty as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Guaranteed Obligations" shall mean the "Obligations" as defined in the Credit Agreement.

"Guaranteed Parties" shall mean "Secured Parties" as defined in the Credit Agreement.

"Obligee Guarantor" shall have the meaning set forth in Section 2.6.

"Qualified ECP Guarantor" means, in respect of any Swap Obligations, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

"Voidable Transfer" shall have the meaning set forth in Section 2.10.

1.2 Other Definitional Provisions. (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty, and Section, Schedule, Exhibit and Annex references, are to this Guaranty unless otherwise specified. References to any Schedule, Exhibit or Annex shall mean such Schedule, Exhibit or Annex as amended or supplemented from time to time in accordance with this Guaranty.

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(b) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein shall mean payment in cash in immediately available funds.

(c) The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2 GUARANTEE

2.1 Guarantee of Guaranteed Obligations. Each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to the Agent, for the benefit of the Guaranteed Parties, the prompt and complete payment and performance by the Borrower and each other Guarantor, when due (whether at the stated maturity, by acceleration or otherwise) of the Guaranteed Obligations. Each Guarantor shall be liable under its guarantee set forth in this Section 2.1, without any limitation as to amount, for all present and future Guaranteed Obligations, including specifically all future increases, whether or not any such increase is committed, contemplated or provided for by the Loan Documents on the date hereof. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all Guaranteed Obligations that would be owed by any other obligor on the Guaranteed Obligations but for the fact that they are unenforceable or not allowable due to the existence of an insolvency or liquidation proceeding involving such other obligor.

2.2 Limitation on Obligations Guaranteed. (a) Notwithstanding any other provision hereof, the right of recovery against each Guarantor under Section 2 hereof shall be limited to the maximum amount that can be guaranteed by such Guarantor without rendering such Guarantor's obligations under Section 2 hereof void or voidable under applicable law, including, without limitation, the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act or any similar foreign, federal or state law, in each case after giving full effect to the liability under such guarantee set forth in Section 2 hereof and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor. For purposes of the foregoing, all guarantees of such Guarantor other than the guarantee under Section 2 hereof will be deemed to be enforceable and payable after the guaranty under Section 2 hereof. To the fullest extent permitted by applicable law, this Section 2.2(a) shall be for the benefit solely of creditors and representatives of creditors of each Guarantor and not for the benefit of such Guarantor or the holders of any Equity Interest in such Guarantor.

(a) Each Guarantor agrees that Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.2(a) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Guaranteed Party hereunder.

2.3 Nature of Guarantee; Continuing Guarantee; Waivers of Defenses Etc. (a) The guarantee contained in this Section 2 is a continuing guarantee of payment and performance and not merely of collectability. Each Guarantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon the Borrower or any of the other Guarantors with respect to the Guaranteed Obligations. Without limiting the generality of the foregoing, this Guaranty and the obligations of each Guarantor hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, set-off, defense, counterclaim, discharge or termination for any reason (other than a Discharge of the Guaranteed Obligations).

(a) Each Guarantor agrees that the Guaranteed Obligations of each Guarantor hereunder are independent of the Guaranteed Obligations of each other Guarantor, and when making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Guaranteed Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower and any other Guarantor or against any Collateral or other guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and any failure by any Guaranteed Party to make any such demand, to pursue such other rights or remedies shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Guaranteed Party against any Guarantor.

(b) No payment made by the Borrower, any of the other Guarantors or any other Person or received or collected by any Guaranteed Party by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment remain liable for the full amount of Guaranteed Obligations which remain outstanding from time to time until the Discharge of the Guaranteed Obligations.

(c) Without limiting the generality of the foregoing, each Guarantor agrees that its Guaranteed Obligations, and any security interest in respect thereof, shall not be affected by, and shall remain in full force and effect without regard to, and hereby waives all, rights, claims or defenses that it might otherwise have (now or in the future) with respect to each of the following (whether or not such Guarantor has knowledge thereof):

(i) the validity or enforceability of the Credit Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, any of the Guaranteed Obligations or any guarantee or right of offset with respect thereto at any time or from time to time held by any Guaranteed Party;

(ii) any renewal, extension or acceleration of, or any increase in the amount of the Guaranteed Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents or any Secured Hedge Agreement or Secured Cash Management Agreement;

(iii) any failure, omission or delay in enforcement (by agreement or otherwise), or the stay or enjoining (by court order, operation of law or otherwise) of the exercise of enforcement, of any claim or demand or any right, power or remedy (whether arising under any Loan Documents, any Secured Hedge Agreement or any Secured Cash Management Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any guaranty, agreement, Collateral or other security relating thereto;

(iv) any change, reorganization or termination of the corporate structure or existence of Borrower or any other Guarantor or any of their Subsidiaries and any corresponding restructuring of the Guaranteed Obligations;

(v) any settlement, compromise, release, subordination or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Guaranteed Obligations;

(vi) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Guaranteed Obligations or any other impairment of such collateral;

(vii) any exercise of remedies with respect to the Collateral or any other security for the Guaranteed Obligations at such time and in such order and in such manner as the Agent and the Guaranteed Parties may decide, whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Guarantor would otherwise have and, without limiting the generality of the foregoing or any other provisions hereof, each Guarantor hereby expressly waives any and all benefits which might otherwise be available to such Guarantor under applicable law; and

(viii) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower or any other Guarantor for the Guaranteed Obligations, or of such Guarantor under the guarantee contained in this Section 2 or of any security interest granted by any Guarantor, whether in an insolvency or liquidation proceeding or in any other instance.

(d) In addition each Guarantor further waives any and all other defenses, set- offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it, the Borrower or any other Guarantor or Person against any Guaranteed Party, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury.

2.4 Rights of Reimbursement, Contribution and Subrogation.

If any payment is made on account of the Guaranteed Obligations by any Guarantor or is received or collected on account of the Guaranteed Obligations from any Guarantor or its property:

(a) If such payment is made by a Guarantor or from its property in respect of the Guaranteed Obligations of the Borrower or any other Guarantor, such Guarantor shall, subject to the terms of this Section 2.4, be entitled to contribution in respect of such payment and, subject to and upon (but not before) a Discharge of the Guaranteed Obligations, shall be entitled (A) to demand and enforce reimbursement for the full amount of such payment from such other Guarantor, and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of such payment. For this purpose, the fair share of each Guarantor shall be determined based on an equitable apportionment among all Guarantors (other than the Guarantor whose primary obligations were so guaranteed by the other Guarantors) based on the relative value of their assets and any other equitable considerations deemed appropriate by the court. For purposes of the foregoing, all guarantees of such Guarantor other than the guarantee under Section 2 hereof will be deemed to be enforceable and payable after the guaranty under Section 2 hereof.

(b) If and whenever any right of reimbursement or contribution becomes enforceable by any Guarantor against the Borrower or any other Guarantor whether under Section 2.4(a) or otherwise, such Guarantor shall be entitled, subject to and upon (but not before) a Discharge of the Guaranteed Obligations, to be subrogated to any security interest that may then be held by the Agent upon any collateral securing or purporting to secure any of the Guaranteed Obligations. Any right of subrogation of any Guarantor shall be enforceable solely after a Discharge of the Guaranteed Obligations and solely against the Guarantors, and not against the Guaranteed Parties, and neither the Agent nor any other Guaranteed Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any collateral securing or purporting to secure any of the Guaranteed Obligations for any purpose related to any such right of subrogation.

(c) All rights and claims arising under this Section 2.4 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Guarantor as to any payment on account of either (x) the Guaranteed Obligations or (y) any other obligation that is secured by any collateral that also secures or purports to secure any of the Guaranteed Obligations, in each case made by it or received or collected from its property shall be fully subordinated to the Guaranteed Obligations in all respects prior to the Discharge of the Guaranteed Obligations. Until Discharge of the Guaranteed Obligations, no Guarantor may demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Guarantor in any bankruptcy case, receivership, or insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Agent, for application to the payment of the Guaranteed Obligations. If any such payment or distribution is received by any Guarantor, it shall be held by such Guarantor in trust, as trustee of an express trust for the benefit of the Guaranteed Parties, and shall forthwith be transferred and delivered by such Guarantor to the Agent, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of the Guarantors under this Guaranty and the other Loan Documents, including their liability for the Guaranteed Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectability or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.4 or otherwise. The invalidity, insufficiency, unenforceability or uncollectability of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Guaranteed Party against any Guarantor or its property. The Guaranteed Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

2.5 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Agent without set-off, defense or counterclaim in Dollars in immediately available funds at the office of the Agent located at the Administrative Agent's Office specified in the Credit Agreement.

2.6 Subordination of Other Obligations. Any Indebtedness of the Borrower or any other Guarantor now or hereafter held by any other Guarantor (the "Obligee Guarantor"), whether as original creditor, assignee, or by way of contribution, subrogation, restitution or otherwise, is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Agent on behalf of the Guaranteed Parties and shall forthwith be paid over to the Agent for the benefit of the Guaranteed Parties to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

2.7 Financial Condition of Borrower and other Guarantors. Any Credit Extension may be made to the Borrower or continued from time to time, and any Secured Hedge Agreement and Secured Cash Management Agreement may be entered into from time to time, in each case, without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower or any other Guarantor at the time of any such grant or continuation or at the time such Secured Hedge Agreement or Secured Cash Management Agreement is entered into, as the case may be. No Guaranteed Party shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower or any other Guarantor. Each Guarantor has adequate means to obtain information from the Borrower and each other Guarantor on a continuing basis concerning the financial condition of the Borrower and each other Guarantor and its ability to perform its obligations under the Loan Documents, Secured Cash Management Agreements and Secured Hedge Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and each other Loan Party and each other Guarantor and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Guaranteed Party to disclose any matter, fact or thing relating to the business, operations or condition of the Borrower or any other Guarantor now known or hereafter known by any Guaranteed Party.

2.8 Bankruptcy, Etc. Until a Discharge of the Guaranteed Obligations, no Guarantor shall, without the prior written consent of the Agent, commence or join with any other person in commencing any insolvency or liquidation proceeding of or against the Borrower or any other Guarantor. The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or insolvency or liquidation proceeding, voluntary or involuntary, involving the Borrower or any other Guarantor or by any defense which the Borrower or any Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. To the fullest extent permitted by law, the Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Agent, or allow the claim of the Agent in respect of, any interest, fees, costs, expenses or other Guaranteed Obligations accruing or arising after the date on which such case or proceeding is commenced.

2.9 Duration of Guarantee, Discharge of Guarantee Upon Sale of Guarantor. (a) Except as provided in Section 2.9(b) below, and subject to Section 2.10 below, the guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of the Guaranteed Obligations.

(a) The guaranty of any Guarantor hereunder shall automatically be discharged and released without any further action by any Guaranteed Party or other Person in the circumstances described in Section 9.10(b) and (c) of the Credit Agreement.

(b) At such time as there has been a Discharge of the Guaranteed Obligations, this Agreement and all obligations (other than those expressly stated to survive such termination) of the Agent and each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of any Guarantor following any such termination or any release pursuant to Section 2.9(b), the Agent shall execute and deliver to such Guarantor such documents as such Guarantor shall reasonably request to evidence such termination.

2.10 Reinstatement. If at any time payment of any of the Guaranteed Obligations or any portion thereof is rescinded, disgorged or must otherwise be restored or returned by any Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any other Guarantor or any substantial part of its property, or otherwise, or if any Guaranteed Party repays, restores, or returns, in whole or in part, any payment or property previously paid or transferred to the Guaranteed Party in full or partial satisfaction of any Guaranteed Obligation, because the payment or transfer or the incurrence of the obligation is so satisfied, is declared to be void, voidable, or otherwise recoverable under any state or federal law (collectively a "Voidable Transfer"), or because such Guaranteed Party elects to do so on the reasonable advice of its counsel in connection with an assertion that the payment, transfer, or incurrence is a Voidable Transfer, then, as to any such Voidable Transfer, and as to all reasonable costs, expenses and attorney's fees of the Guaranteed Party related thereto, the liability of each Guarantor hereunder will automatically and immediately be revived, reinstated, and restored and will exist as though the Voidable Transfer had never been made.

2.11 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.11, or otherwise under this Guaranty, as it relates to such Loan Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a discharge of Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 2.11 constitute, and this Section 2.11 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 3 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE GUARANTORS.

3.1 Representations and Warranties. Each Guarantor represents and warrants to the Guaranteed Parties on the Closing Date and on the date of each Credit Extension that the representations and warranties set forth in Section 4 of the Credit Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party, each of which is incorporated herein by reference, are true and correct in all material respects, except for representations and warranties that are qualified as to "materiality", "Material Adverse Effect" or similar language, in which case such representations and warranties shall be true and correct (after giving effect to any such qualification therein) in all respects as of such date, in each case unless expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the Guaranteed Parties shall be entitled to rely on each of such representations and warranties as if they were fully set forth herein, provided that each such reference in each such representation and warranty to any Borrower's knowledge shall, for the purposes of this Section 3.1, be deemed to be a reference to such Guarantor's knowledge.

3.2 Covenants. Each Guarantor covenants and agrees with the Guaranteed Parties that, from and after the date of this Guaranty until the Discharge of the Guaranteed Obligations, such Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries.

SECTION 4 POWER OF ATTORNEY AND FURTHER ASSURANCES

4.1 Agent's Appointment as Attorney-in-Fact, Etc. Each Guarantor hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Guarantor and in the name of such Guarantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement.

4.2 Further Assurances. Each Guarantor agrees that from time to time, at the expense of such Guarantor, it shall promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that the Agent may reasonably request, in order to ensure that the Guaranteed Parties receive the intended benefits hereof or to enable the Agent to exercise and enforce its rights and remedies hereunder.

SECTION 5 APPLICATION OF PROCEEDS

The Agent shall apply any proceeds of the guarantee set forth herein in Section 6.4 of the Security Agreement.

SECTION 6 THE AGENT

6.1 Authority of Agent. (a) Each Guarantor acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the other Guaranteed Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Guarantors, the Agent shall be conclusively presumed to be acting as agent for the Guaranteed Parties with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

(a) The Agent has been appointed to act as Agent hereunder by the Lenders and, by their acceptance of the benefits hereof, the other Guaranteed Parties. The Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action, solely in accordance with this Agreement and the Credit Agreement. The provisions of the Credit Agreement relating to the Agent, including without limitation, the provisions relating to resignation or removal of the Agent (subject to Section 6.2 hereof) and the powers and duties and immunities of the Agent, are incorporated herein by this reference and shall survive any termination of the Credit Agreement.

6.2 Exculpation of the Agent. (a) The Agent shall not be responsible to any Guaranteed Party for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or for any representations, warranties, recitals or statements made herein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by the Agent to the Guaranteed Parties or by or on behalf of any Guaranteed Party to the Agent or any Guaranteed Party in connection with the transactions contemplated hereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Guaranteed Obligations, nor shall the Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents, Secured Hedge Agreement or Secured Cash Management Agreement or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing.

(a) Neither the Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Guaranteed Parties for any action taken or omitted by the Agent under or in connection herewith except to the extent caused solely and proximately by the Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Agent shall be entitled to refrain from any act or the taking of any action in connection herewith or from the exercise of any power, discretion or authority vested in it hereunder or thereunder.

(b) Without limiting the indemnification provisions of the Credit Agreement, each of the Guaranteed Parties not party to the Credit Agreement severally agrees to indemnify the Agent, to the extent that the Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in exercising its powers, rights and remedies or performing its duties hereunder or otherwise in its capacity as the Agent in any way relating to or arising out of this Agreement; provided, no such Guaranteed Party shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely and proximately from the Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts insufficiently indemnified against until such additional indemnity is furnished.

6.3 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers under this Agreement by or through any one or more sub-agents appointed by the Agent. The 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 Affiliates. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 6 shall apply to any such sub-agent and to any of the Affiliates of the Agent and any such sub-agents, and shall apply to their respective activities as if such sub-agent and Affiliates were named herein in connection with the transactions contemplated hereby and by the Security Documents. Notwithstanding anything herein to the contrary, each sub-agent appointed by the Agent or Affiliate of the Agent or Affiliate of any such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Guaranteed Parties, and such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent or Affiliate acting in such capacity.

6.4 Hedge Banks or Cash Management Banks. No Hedge Bank or Cash Management Bank that obtains the benefits hereof, shall have any right to notice of any action or to consent to, direct or object to any action under any Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Guaranty to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Guaranteed Obligations arising under Secured Hedge Agreements and Secured Cash Management Agreements unless the Agent has received written notice of such Guaranteed Obligations, together with such supporting documentation as the Agent may request, from the applicable Hedge Bank or Cash Management Bank.

SECTION 7 MISCELLANEOUS

7.1 Incorporation by Reference. Sections 1.02(c), 10.01, 10.02. 10.03, 10.04, 10.06, 10.08, 10.10, 10.12, 10.14, 10.17 and 10.18 of the Credit Agreement are hereby incorporated by reference, mutatis mutandis, and each Guaranteed Party shall be entitled to rely on each of them as if they were fully set forth herein; provided that each reference therein to the Borrower shall be deemed to also be a reference to each Guarantor.

7.2 Additional Guarantors. Each Subsidiary of the Borrower or other Person that is required to become a party to this Agreement pursuant to Section 6.11 of the Credit Agreement shall become a Guarantor as required by the Credit Agreement for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Joinder Agreement in the form of Annex 1 hereto.

7.3 WAIVER OF JURY TRIAL. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

[This Space Intentionally Left Blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Guaranty Agreement to be duly executed and delivered as of the date first above written.

BORROWER:

TURNING POINT BRANDS, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

Notice to:
Turning Point Brands, Inc.
5201 Interchange Way
Louisville, KY 40229
Attention: Chief Financial Officer
Email: rlavan@tpbi.com

with a copy to

Milbank
55 Hudson Yards
New York, NY 10001-2163
Attention: Mike Bellucci
Email: MBellucci@milbank.com

GUARANTORS:

NORTH ATLANTIC TRADING COMPANY, INC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC OPERATING COMPANY, INC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Guarantee Agreement]

NORTH ATLANTIC CIGARETTE COMPANY, INC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TURNING POINT BRANDS, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NATIONAL TOBACCO FINANCE, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

INTREPID BRANDS, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB BEAST LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB INTERNATIONAL, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SHARK, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X VENTURES, LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-TECH HOLDINGS LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

SOUTH BEACH HOLDINGS LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X DISTRIBUTION LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC WRAP COMPANY LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SERVICES LLC

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NATIONAL TOBACCO COMPANY, LP

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

RBJ SALES, INC.

By: /s/ Brittani Cushman
Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

Notice to:
Turning Point Brands, Inc.
5201 Interchange Way
Louisville, KY 40229
Attention: Chief Financial Officer
Email: rlavan@tpbi.com

with a copy to

Milbank
55 Hudson Yards
New York, NY 10001-2163
Attention: Mike Bellucci
Email: MBellucci@milbank.com

AGENT:

BARCLAYS BANK PLC,
as Agent

By: /s/ Christopher M. Aitkin
Name: Christopher M. Aitkin
Title: Vice President

Barclays Bank PLC
Bank Debt Management Group
745 Seventh Avenue
New York, NY 10019
Attn: Turning Point Brands Portfolio Manager: Philip Naber / Nicholas Sibayan
Tel: 212-526-7375 / 212-526-9531
Email: nicholas.sibayan@barclays.com and philip.naber@barclays.com

JOINDER AGREEMENT, dated as of _____, 20____, made by _____, a _____ corporation (the "Additional Guarantor"), in favor of Barclays Bank PLC, as Agent (in such capacity, the "Agent") for (i) the banks and other financial institutions and entities (the "Lenders") parties to the Credit Agreement referred to below, and (ii) the other Guaranteed Parties (as defined in the Guaranty Agreement (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in such Credit Agreement.

W I T N E S S E T H:

WHEREAS, Turning Point Brands, Inc. (the "Borrower"), the Lenders, and the Agent have entered into a Credit Agreement, dated as of February 11, 2021 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Guarantor) have entered into the Guarantee Agreement, dated as of February 11, 2021 (as amended, supplemented replaced or otherwise modified from time to time, the "Guaranty Agreement") in favor of the Agent for the benefit of the Guaranteed Parties;

WHEREAS, the Credit Agreement requires the Additional Guarantor to become a party to the Guaranty Agreement; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Guaranty Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guaranty Agreement. By executing and delivering this Joinder Agreement, the Additional Guarantor, as provided in Section 7.14 of the Guaranty Agreement, hereby becomes a party to the Guaranty Agreement as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The Additional Guarantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guaranty Agreement is true and correct on and as the date hereof (after giving effect to this Joinder Agreement) as if made on and as of such date.

2. GOVERNING LAW. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

3. Successors and Assigns. This Joinder Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Additional Guarantor may not assign, transfer or delegate any of its rights or obligations under this Assumption Agreement without the prior written consent of the Agent and any such assignment, transfer or delegation without such consent shall be null and void unless pursuant to a transaction permitted by the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

Annex I

Exhibit 10.5

Execution Version

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIEN AND SECURITY INTEREST GRANTED TO THE COLLATERAL AGENT PURSUANT TO THIS SECURITY AGREEMENT AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL AGENT HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE "INTERCREDITOR AGREEMENT" (AS DEFINED IN THE INDENTURE REFERRED TO BELOW). IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS SECURITY AGREEMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL; PROVIDED HOWEVER, THE INDENTURE (AS DEFINED BELOW) AND THIS SECURITY AGREEMENT SHALL GOVERN AND CONTROL THE RIGHTS, POWERS, PROTECTIONS, IMMUNITIES, AND INDEMNITIES OF THE COLLATERAL AGENT.

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended or modified from time to time, the "Security Agreement") is entered into as of February 11, 2021 by and among Turning Point Brands, Inc., a Delaware corporation (the "Company"), the other parties named on the signature pages hereto (together with the Company, the "Grantors", and each a "Grantor"), and GLAS Trust Company LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, in its capacity as collateral agent (the "Collateral Agent") under the Indenture (as defined below).

PRELIMINARY STATEMENT

The Grantors and GLAS Trust Company LLC, in its capacity as the trustee (the "Trustee") and as the Collateral Agent are entering into an Indenture dated as of February 11, 2021 (as it may be amended or modified from time to time, the "Indenture"). Each Grantor is entering into this Security Agreement in order to induce the Noteholders to purchase the notes and to secure the Secured Obligations that it has agreed to guarantee pursuant to Article XI of the Indenture.

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Noteholders, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1. Terms Defined in Indenture. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC (and if defined in more than one article of the UCC shall have the meaning specified in Article 9 thereof).

1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"Assigned Contracts" means, collectively, all of the Grantors' rights and remedies under, and all moneys and claims for money due or to become due to any Grantor under all contracts and other agreements between any Grantor and any party other than the Collateral Agent or any noteholder and all amendments, supplements, extensions, and renewals thereof including all rights and claims of such Grantor now or hereafter existing: (a) under any insurance, indemnities, warranties, and guarantees provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing agreements; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers and privileges thereunder.

"Collateral" shall have the meaning set forth in Article II.

"Commercial Tort Claims" means "commercial tort claims" as defined in Article 9 of the UCC and shall include, without limitation, the existing commercial tort claims of each Grantor now or hereafter set forth in Exhibit C attached hereto, as amended or supplemented to reflect such additional Commercial Tort Claims.

"Control" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"Copyrights" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights in any of the foregoing throughout the world.

"Exhibit" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced. References to any Exhibit shall mean such Exhibit as amended, supplemented or otherwise modified from time to time.

"Licenses" means, with respect to any Person, (a) any and all licensing agreements or arrangements granting rights in and to its Patents, Copyrights, or Trademarks, (b) all of such Person's right, title, and interest in and to all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

"Patents" means, with respect to any Person, all of such Person's right, title, and interest in and to: (a) any and all U.S. patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights in any of the foregoing throughout the world.

"Pledged Collateral" means all Instruments, Securities and other Investment Property of the Grantors, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement, but excluding any Excluded Assets.

"Noteholders" means the Holders of the Notes issued pursuant to the Indenture and their successors and assigns.

"Receivables" means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

"Section" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"Secured Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities, payable to the Trustee, the Collateral Agent or the Noteholders pursuant to the Indenture.

"Secured Parties" means the Trustee, the Collateral Agent and the Noteholders under the Indenture.

"Stock Rights" means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Equity Interest constituting Collateral, any right to receive an Equity Interest and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Equity Interest.

"Trademarks" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights in any of the foregoing throughout the world.

"UCC" means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Collateral Agent's or any noteholder's Lien on any Collateral.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II
GRANT OF SECURITY INTEREST

Each Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the ratable benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Copyrights, Patents, Trademarks and Licenses;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles;

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property;

(xii) all cash or cash equivalents;

(xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;

(xiv) all Deposit Accounts with any bank or other financial institution;

(xv) all Commercial Tort Claims;

(xvi) all securities accounts with any financial institution or securities intermediary;

(xvii) all Assigned Contracts; and

(xviii) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the prompt and complete payment and performance of the Secured Obligations.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any Excluded Assets.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the Noteholders that:

3.1. Title, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Permitted Liens, and has full power and authority to grant to the Collateral Agent the security interest in the Collateral pursuant hereto. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit F, the Collateral Agent will have a fully perfected first priority security interest in that Collateral of the Grantor in which a security interest may be perfected by filing, subject only to Permitted Liens.

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of such Grantor, its state or other jurisdiction of organization, the organizational number issued to it by its state or other jurisdiction of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

3.4. Exact Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization.

3.5. [Reserved].

3.6. Deposit Accounts and Securities Accounts. All of such Grantor's Deposit Accounts and Securities Accounts are listed on Exhibit B.

3.7. Intellectual Property. Such Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright, except as set forth in Exhibit D.

3.8. Filing Requirements. As of the date hereof, none of the Collateral owned by it with a value exceeding $5,000,000 for any individual item of Collateral is of a type for which security interests or liens may be perfected by filing under any federal statute except for Patents, Trademarks and Copyrights held by such Grantor and described in Exhibit D.

3.9. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Secured Parties and (b) as otherwise permitted under the Indenture and the Security Documents.

3.10. Pledged Collateral.

(a) Exhibit E sets forth a complete and accurate list of all Pledged Collateral owned by such Grantor as of the date hereof. Such Grantor is the direct, sole beneficial owner and sole holder of record of the Pledged Collateral listed on Exhibit E as being owned by it, free and clear of any Liens, except for the security interest granted to the Collateral Agent for the benefit of the Secured Parties hereunder and Permitted Liens. Such Grantor further represents and warrants that all Pledged Collateral owned by it constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Pledged Collateral) duly authorized, validly issued, are fully paid and non-assessable.

(b) In addition, (i) none of the Pledged Collateral owned by it has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject, (ii) no options, warrants, calls or commitments of any character whatsoever (A) exist relating to such Pledged Collateral or (B) obligate the issuer of any Equity Interest included in the Pledged Collateral to issue additional Equity Interests, and (iii) no consent, approval, authorization, or other action by, and no giving of notice to or filing with, any governmental authority or any other Person is required for the pledge by such Grantor of such Pledged Collateral pursuant to this Security Agreement, or for the exercise by the Collateral Agent of the voting or other rights provided for in this Security Agreement or for the remedies in respect of the Pledged Collateral pursuant to this Security Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(c) Except as set forth in Exhibit E, such Grantor owns 100% of the issued and outstanding Equity Interests which constitute Pledged Collateral owned by it.

ARTICLE IV
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

4.1. General.

(a) Collateral Records. Such Grantor shall maintain complete and accurate (in all material respects) books and records with respect to the Collateral owned by it, and furnish to the Collateral Agent, such reports relating to such Collateral as the Collateral Agent shall from time to time request (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding).

(b) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Collateral Agent to file all financing statements and other documents as may from time to time be reasonably required by the Collateral Agent (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) in order to maintain a perfected security interest in the Collateral owned by such Grantor with the priority required by the Indenture. Any financing statement so authorized may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon request (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding). Such Grantor also ratifies its authorization for the Collateral Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Notwithstanding the foregoing authorizations, each Grantor agrees to prepare, record and file, at its own expense, financing statements (and amendments or continuation statements when applicable) with respect to Collateral now existing or hereafter created meeting the requirements of the applicable state law in such manner and in such jurisdictions are necessary to prefect and maintain a perfected Lien in the Collateral, and to timely deliver a file-stamped copy of each filed financing statement or other evidence of filing to the Collateral Agent. Notwithstanding anything herein to the contrary, the Collateral Agent shall have no responsibility for preparing, recording, filing, re-recording, or re-filing any financing statement, perfection statement, continuation statement or other instrument in any public office or for otherwise ensuring the perfection or maintenance of any security interest granted pursuant to this Security Agreement, the Indenture or any Security Document.

(c) Other Financing Statements. Such Grantor shall not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except for financing statements (i) naming the Collateral Agent on behalf of the Secured Parties as the secured party, and (ii) in respect to Permitted Liens. Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed by the Collateral Agent without the prior written consent of the Collateral Agent, acting at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding, subject to such Grantor's rights under Section 9-509(d)(2) of the UCC.

4.2. Delivery of Instruments, Securities, Chattel Paper and Documents. Subject to Section 10.1 of the Indenture, such Grantor shall (a) deliver to the Collateral Agent immediately upon execution of this Security Agreement and from time-to-time as required herein the originals of all Securities and Instruments constituting Collateral owned by it (if any then exist) with a value in excess of $5,000,000 individually, (b) hold in trust for the Collateral Agent upon receipt and upon request deliver to the Collateral Agent (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) any other Securities and Instruments constituting Collateral and (c) upon the Collateral Agent's request (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding), deliver to the Collateral Agent (and thereafter hold in trust for the Collateral Agent upon receipt and immediately deliver to the Collateral Agent) any Document evidencing or constituting Collateral. Such Grantor hereby authorizes the Collateral Agent to attach each amendment to this Security Agreement and agrees that all additional Collateral owned by it set forth in such amendments shall be considered to be part of the Collateral.

4.3. Pledged Collateral.

(a) Exercise of Rights in Pledged Collateral.

(i) Without in any way limiting the foregoing and subject to clause (ii) below, such Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral owned by it for all purposes not inconsistent with this Security Agreement, the Indenture or any other Security Document.

(ii) Such Grantor shall permit the Collateral Agent or its nominee (acting at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) at any time during the continuation of an Event of Default, after prior written notice to any Grantor, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Equity Interest or Investment Property constituting such Pledged Collateral as if it were the absolute owner thereof.

(iii) Unless an Event of Default under the Indenture has occurred and is ongoing, such Grantor shall be entitled to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Collateral owned by it to the extent not in violation of the Indenture.

4.4. Uncertificated Pledged Collateral. Such Grantor shall permit the Collateral Agent from time to time to direct the appropriate issuers of uncertificated securities or other types of Pledged Collateral owned by it not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Pledged Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Collateral Agent granted pursuant to this Security Agreement.

4.5. Intellectual Property.

(a) Such Grantor shall take all actions necessary and appropriate to maintain and pursue each material application, to obtain the relevant registration and to maintain the registration of each of its material Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of non-contestability and opposition and interference and cancellation proceedings, except to the extent the failure to so is not prohibited by the Indenture.

(b) Such Grantor shall, unless it reasonably determines that such Patent, Trademark or Copyright is not material to the conduct of its business or operations, promptly enforce its rights in any such material Patent, Trademark or Copyright, including suing for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions where the Grantor, in the exercise of its reasonable business judgment, determines that such action is appropriate, or if during the existence of an Event of Default, as the Collateral Agent shall deem appropriate (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) under the circumstances to protect such material Patent, Trademark or Copyright.

4.6. Commercial Tort Claims. Such Grantor shall promptly, and in any event within 30 days after a Commercial Tort Claim exceeding $5,000,000 is filed in a court of competent jurisdiction, notify the Collateral Agent and, unless the Collateral Agent (acting at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) otherwise consents, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit G hereto, granting to Collateral Agent a first priority security interest in such Commercial Tort Claim and in the proceeds thereof, and amending and supplementing Exhibit C.

4.7. Federal, State or Municipal Claims. Such Grantor shall promptly notify the Collateral Agent of any Collateral which constitutes a claim in excess of $5,000,000 against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.8. No Interference. Such Grantor agrees that it shall not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

4.9. Change of Name or Location. Such Grantor shall notify the Collateral Agent in writing within 30 days of each of the following (a) a change of its name as it appears in official filings in the state or jurisdiction of its incorporation or organization, (b) a change of its chief executive office, (c) a change of the type of entity that it is or (d) a change of its state or jurisdiction of incorporation or organization, in each case, and shall take any action necessary and appropriate in connection therewith (including any action to continue the perfection of any Liens in favor of the Collateral Agent, on behalf of Secured Parties, in any Collateral).

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

5.1. Remedies.

(a) Upon the occurrence of an Event of Default which is continuing, the Collateral Agent may, and at the written request of the Holders of a majority in aggregate principal amount of the Notes then outstanding shall, exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Indenture, or any other Security Document; *provided that,* this Section 5.1 shall not be understood to limit any rights or remedies available to the Collateral Agent and the Secured Parties prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Agent may deem commercially reasonable; and

(iv) concurrently upon written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof.

(b) The Collateral Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance shall not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Grantor hereby expressly releases.

(d) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) Notwithstanding the foregoing, neither the Collateral Agent nor the Noteholders shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(f) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (a) above. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so. The Collateral Agent shall incur no liability as a result of the sale (whether public or private) of the Collateral or any part thereof at any sale pursuant to this Agreement conducted in a commercially reasonable manner. Each of the Grantors and Secured Parties hereby waive any claims against the Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such sale (whether public or private) was less than the price that might have been obtained otherwise, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, so long as such sale is conducted in a commercially reasonable manner. Each of the Grantors and Secured Parties hereby agree that in respect of any sale of any of the Collateral pursuant to the terms hereof, Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any governmental authority or official, and the Grantors and Secured Parties further agree that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to the Grantors or Secured Parties for any discount allowed by reason of the fact that the Collateral or any part thereof is sold in compliance with any such limitation or restriction.

5.2. Grantor's Obligations Upon Event of Default. Upon the request of the Collateral Agent (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding) after the occurrence of an Event of Default which is continuing, each Grantor shall:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at a Grantor's premises or elsewhere;

(b) permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Collateral Agent may request (at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding), all in form and substance satisfactory to the Holders of a majority in aggregate principal amount of the Notes then outstanding and the Collateral Agent, and furnish to the Collateral Agent, or cause an issuer of Pledged Collateral to furnish to the Collateral Agent, any information regarding the Pledged Collateral in such detail as the Collateral Agent may specify; and

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Collateral Agent to consummate a public sale or other disposition of the Pledged Collateral.

5.3. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V solely during such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (a) grants to the Collateral Agent, to the extent that it has the right to do so and subject to any pre-existing rights of third parties, for the benefit of the Secured Parties, an irrevocable, assignable nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any intellectual property rights now owned or hereafter owned or licensed by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, for the avoidance of doubt solely to the extent necessary or advisable (as determined by the Holders of a majority in aggregate principal amount of the Notes then outstanding) for the Collateral Agent to exercise the rights and remedies under this Article V and (b) irrevocably agrees that the Collateral Agent may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Collateral Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein, provided in each of the foregoing grants that, with respect to Trademarks, such Grantor shall have such rights of quality control solely as are necessary under applicable law to maintain the validity and enforceability of such Trademarks.

ARTICLE VI
ATTORNEY IN FACT; PROXY

6.1. Authorization for Collateral Agent to Take Certain Action.

(a) Each Grantor irrevocably authorizes the Collateral Agent at any time and from time to time as necessary and appropriate and appoints the Collateral Agent as its attorney in fact (i) to file financing statements necessary or desirable to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (ii) to endorse and collect any cash proceeds of the Collateral, (iii) to file any financing statement with respect to the Collateral and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as necessary and appropriate to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (iv) to apply the proceeds of any Collateral received by the Collateral Agent to the Secured Obligations as provided in Section 6.4, (v) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens that are permitted by the Indenture), (vi) to contact Account Debtors for any reason, (vii) to demand payment or enforce payment of the Receivables in the name of the Collateral Agent or such Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (viii) to sign such Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of the Grantor, assignments and verifications of Receivables, (ix) to exercise all of such Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (x) to settle, adjust, compromise, extend or renew the Receivables, (xi) to settle, adjust or compromise any legal proceedings brought to collect Receivables, (xii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (xiii) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (xiv) to change the address for delivery of mail addressed to such Grantor to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (xv) to do all other acts and things reasonably necessary to carry out this Security Agreement; *provided that,* this authorization shall not relieve such Grantor of any of its Secured Obligations under this Security Agreement or under the Indenture.

(b) The powers conferred on the Collateral Agent, for the benefit of Noteholders, under this Section 6.1 are solely to protect the Collateral Agent's interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Noteholders to exercise any such powers. The Collateral Agent agrees that, except for the powers granted in Section 6.1(a)(i) and (iii), it shall not exercise any power or authority granted to it unless an Event of Default has occurred and is continuing.

6.2. Proxy. EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.1 ABOVE) WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF ANY OF THE PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY OF THE PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

6.3. Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.13. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE COLLATERAL AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, NOR ANY OF THEIR OR THEIR AFFILIATES' RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO.

6.4. Application of Proceeds. Subject to the provisions of the Intercreditor Agreement, at such intervals as may be mutually agreed in writing upon by the Company and the Trustee, or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's election, the Collateral Agent may, notwithstanding the provisions of Section 3.1 of the Indenture, apply all or any part of the Net Proceeds (after deducting fees and expenses as provided in Section 7.7 of the Indenture) constituting Collateral realized through the exercise by the Collateral Agent of its remedies hereunder and any proceeds of the guarantee set forth in Section 11.1 of the Indenture, in payment of the Secured Obligations in the following order:

first, to the Trustee (acting in any capacity) and to the Collateral Agent, and their respective agents and attorneys, in each case for amounts and other Secured Obligations due to any of them under the Indenture or the Security Documents, including payment of all compensation, expenses and liabilities incurred, and all advances made, and costs and expenses of collection;

second, to Noteholders for amounts and other Secured Obligations due and unpaid on the notes issued pursuant to the Indenture including for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the notes issued pursuant to the Indenture for principal and interest, respectively; and

third, any surplus remaining after satisfaction and discharge of the Indenture and the notes issued thereunder shall be paid to the Company or to such party as a court of competent jurisdiction shall direct.

ARTICLE VII
[RESERVED]

ARTICLE VIII
GENERAL PROVISIONS

8.1. Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Section 12.2 of the Indenture, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any Secured Parties arising out of the repossession, retention or sale of the Collateral. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any Secured Parties, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

8.2. Limitation on Collateral Agent's and Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each Secured Party shall comply with the standard of care set forth herein with respect to the Collateral in its possession or under its control. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

8.3. Compromises and Collection of Collateral. The Grantors and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent may, acting at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding, determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

8.4. Performance of Debtor Obligations. Without having any obligation to do so, the Collateral Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and the Grantors shall reimburse the Collateral Agent for any amounts paid by the Collateral Agent pursuant to this Section 8.4. The Grantors' obligation to reimburse the Collateral Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.3 or 8.7 will cause irreparable injury to the Collateral Agent and the Secured Parties, that the Collateral Agent and Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the Secured Parties to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantors.

8.6. Dispositions Not Authorized. No Grantor is authorized to sell or otherwise dispose of the Collateral to the extent prohibited herein, the Indenture or in any other Security Document.

8.7. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Collateral Agent or any Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Collateral Agent with the concurrence or at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding required under Article IX of the Indenture and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Collateral Agent and the Secured Parties until the Secured Obligations have been paid in full.

8.8. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of applicable law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

8.9. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.10. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the Secured Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Agent (acting at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding). No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, hereunder.

8.11. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.12. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.13. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no obligations outstanding) until (i) the Indenture has terminated pursuant to its express terms and (ii) all of the Secured Obligations (other than contingent indemnity obligations for which no claim has been made) have been indefeasibly paid and performed in full and no commitments of the Trustee, the Collateral Agent or the Secured Parties which would give rise to any Secured Obligations are outstanding.

8.14. Entire Agreement. This Security Agreement and the other Security Documents embody the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersede all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

8.15. **CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

8.16. **CONSENT TO JURISDICTION. EACH PARTY TO THIS SECURITY AGREEMENT HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER SECURITY DOCUMENT AND EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.**

8.17. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, ANY OTHER SECURITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION**.

8.18. Counterparts. This Security Agreement may be executed in any number of counterparts, including in electronic .pdf format, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement. All notices, approvals, consents, requests and any communications hereunder must be in writing, provided that any communications sent to the Collateral Agent hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Collateral Agent by the authorized representative), in English. Each Grantor and Holders of a majority in aggregate principal amount of the Notes then outstanding (by acceptance of the Notes) agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Collateral Agent, including without limitation the risk of Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

ARTICLE IX
THE COLLATERAL AGENT[1]

9.1. GLAS Trust Company LLC is executing this Security Agreement, not in its individual capacity but solely in its capacity as Collateral Agent under that certain Indenture dated as of February 11, 2021. GLAS Trust Company LLC has been appointed Collateral Agent for the Secured Parties hereunder pursuant to Section 10.7 of the Indenture. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Secured Parties to the Collateral Agent pursuant to the Indenture, and that the Collateral Agent has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in Article VII of the Indenture. In acting hereunder, the Collateral Agent shall be entitled to all the rights, powers, protections, immunities, and indemnities under the Indenture as if the same were set forth herein, *mutatis mutandis* and shall survive any termination of this Security Agreement. The permissive rights, benefits and powers granted to the Collateral Agent hereunder shall not be construed as duties. All discretionary acts hereunder (including the exercise of any remedies) shall be taken by the Collateral Agent pursuant to the terms of the Indenture and at the written direction of the Holders of a majority in aggregate principal amount of the Notes then outstanding. The Collateral Agent shall be entitled to exercise its rights, powers and duties hereunder through agents, experts or designees and shall not be responsible for the acts of any such parties appointed with due care.

9.2. The Collateral Agent shall not be responsible in any manner whatsoever for and makes no representation as to the validity or sufficiency of this Security Agreement or for or in respect of the recitals contained herein, all of which recitals are made solely by the applicable Grantor.

---

[1] NTD: Subject to A&P review of applicable Indenture provisions.

9.3. The powers conferred on the Collateral Agent hereunder are solely to protect its security interest in the Collateral. Notwithstanding any provision contained in this Security Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it hereunder and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty or liability as to any Collateral or as to the taking of any necessary steps to exercise or preserve any rights against prior parties or any other rights, privileges or powers pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 7.7 of the Indenture.

9.4. The Collateral Agent shall not be responsible for or make any representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Liens. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting, monitoring or maintaining the perfection of any Lien or security interest in the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise maintaining the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for taking any action to protect against any diminution in value of the Collateral, but, in each case (A) subject to the requirement that the Collateral Agent may not act or omit to take any action if such act or omission would constitute gross negligence or willful misconduct and (B) the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Secured Obligations.

9.5. Nothing in this Security Agreement constitutes the Collateral Agent as an agent, trustee or fiduciary of the Company or any Grantor or as trustee or fiduciary for the Noteholders under the Indenture. The duties of the Collateral Agent under this Security Agreement and the other Security Documents are solely mechanical and administrative in nature. The relationship between the Collateral Agent and the Noteholders is that of principal and agent only. The Collateral Agent is not responsible or liable for the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Company, any Grantor or any other Person in or in connection with the Indenture, this Security Agreement or any Security Document or the transactions contemplated herein or therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Indenture, this Security Agreement or any other Security Document.

9.6. In the event that the Collateral Agent holds a mortgage on real property, and is directed by the Holders of a majority in aggregate principal amount of the Notes then outstanding to foreclose on that mortgage and the Collateral Agent reasonably believes the real property to have associated environmental liabilities, the Collateral Agent reserves the right to not take such foreclosure action until it has received indemnity acceptable to it.

9.7. No provision of this Security Agreement, the Indenture or any of the other Security Documents shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Security Agreement, the Indenture or any of the other Security Documents or the exercise of any of its rights or powers. If it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability including an advance of moneys necessary to perform work or to take the action requested is not reasonably assured to it, the Collateral Agent may decline to act unless it receives indemnity satisfactory to it in its sole discretion, including an advance of moneys necessary to take the action requested.

9.8. The Collateral Agent shall be under no obligation or duty to take any action under this Security Agreement, the Indenture or any of the other Security Documents or otherwise if taking such action (i) would subject the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require the Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Security Agreement as of the date first above written.

GRANTORS:

TURNING POINT BRANDS, INC.

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC TRADING COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC OPERATING COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC CIGARETTE COMPANY, INC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TURNING POINT BRANDS, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

NATIONAL TOBACCO FINANCE, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

INTREPID BRANDS, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB BEAST LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB INTERNATIONAL, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SHARK, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X VENTURES, LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

NU-TECH HOLDINGS LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

SOUTH BEACH HOLDINGS LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NU-X DISTRIBUTION LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NORTH ATLANTIC WRAP COMPANY LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

TPB SERVICES LLC

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

NATIONAL TOBACCO COMPANY, LP

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

RBJ SALES, INC.

By: /s/ Brittani Cushman

Name: Brittani Cushman
Title: Senior Vice President, General Counsel and Secretary

[Signature Page to Security Agreement]

Collateral Agent:

GLAS TRUST COMPANY LLC, as Collateral Agent

By: /s/ Diana Gulyan
Name: Diana Gulyan
Title: AVP

[Signature Page to Security Agreement]

EXHIBIT A

Type and Jurisdiction of Organization, and Principal Location

---

EXHIBIT B

Deposit Accounts and Securities Accounts

EXHIBIT C

Commercial Tort Claims

EXHIBIT D

Intellectual Property, Filing Requirements

EXHIBIT E

Pledged Collateral

EXHIBIT F

Title, Perfection, Priority

EXHIBIT G

Amendment

This Amendment, dated _____, ___ is delivered pursuant to Section [4.2] [4.6] of the Security Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Security Agreement.

RECITALS

Section 1. [Additional Collateral]. The undersigned hereby certifies that the representations and warranties in Article III of the Security Agreement are and continue to be true and correct. The undersigned further agrees that this Amendment may be attached to that certain Pledge and Security Agreement, dated _____ __, 20[●], between the undersigned, as the Grantors, and GLAS Trust Company LLC, as the Collateral Agent (as amended or modified from time to time prior to the date hereof, the "Security Agreement") and that the Collateral listed on Schedule I to this Amendment shall be and become a part of the Collateral referred to in said Security Agreement and shall secure all Secured Obligations referred to in the Security Agreement.

Section 2. CHOICE OF LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3. CONSENT TO JURISDICTION. EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY SUBMITS TO THE NON EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE SECURITY AGREEMENT OR ANY OTHER [SECURITY DOCUMENT] AND EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.

Section 4. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE SECURITY AGREEMENT, ANY OTHER [SECURITY DOCUMENT] OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 5. Counterparts. This Amendment may be executed in any number of counterparts, including in electronic .pdf format, all of which taken together with the Security Agreement, shall constitute one agreement, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Amendment. All notices, approvals, consents, requests and any communications hereunder must be in writing, provided that any communications sent to the Collateral Agent hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Collateral Agent by the authorized representative), in English. Each Grantor hereto agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Collateral Agent, including without limitation the risk of Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

By: _____

Name: _____

Title: _____

SCHEDULE I TO AMENDMENT

COMMERCIAL TORT CLAIMS

Name of Grantor	Description of Claim	Parties	Case Number; Name of Court where Case was Filed

Exhibit 18.1

RSM US LLP

230 North Elm Street
Suite 1100
Greensboro, NC 27401
T +1 336 272 4551
F +1 336 274 2519
www.rsmus.com

May 5, 2021

Turning Point Brands, Inc.
5201 Interchange Way
Louisville, KY 40229

At your request, we have read the description included in your Form 10-Q for the quarter ended March 31, 2021 of the facts relating to your change from the last-in, first-out ("LIFO") method of accounting for certain inventories to the first-in, first-out ("FIFO") method. We believe, on the basis of the facts so set forth and other information furnished to us by appropriate officials of the Company, that the accounting change described in your Form 10-Q is to an alternative accounting principle that is preferable under the circumstances.

We have not audited any consolidated financial statements of Turning Point Brands, Inc. and its consolidated subsidiaries as of any date or for any period subsequent to December 31, 2020. Therefore, we are unable to express, and we do not express, an opinion on the facts set forth in the above-mentioned Form 10-Q on the related information furnished to us by officials of the Company, or on the financial position, results of operations, or cash flows of Turning Point Brands, Inc. and its consolidated subsidiaries as of any date or for any period subsequent to December 31, 2020.

/s/ RSM US LLP

Greensboro, North Carolina

Exhibit 31.1

CERTIFICATIONS

I, Lawrence Wexler, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2021

By: /s/ Lawrence S. Wexler

Lawrence S. Wexler
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Luis Reformina, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2021

By: /s/ Luis Reformina

Luis Reformina
Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.3

CERTIFICATIONS

I, Brian Wigginton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2021

By: /s/ Brian Wigginton
Brian Wigginton
Chief Accounting Officer

Exhibit 32.1

CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Turning Point Brands, Inc. (the "Company") for the quarterly period ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Lawrence S. Wexler, President and Chief Executive Officer, Luis Reformina, Chief Financial Officer, and Brian Wigginton, Chief Accounting Officer, of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: May 5, 2021 By: /s/ Lawrence S. Wexler
Lawrence S. Wexler
President and Chief Executive Officer
(Principal Executive Officer)

Date: May 5, 2021 By: /s/ Luis Reformina
Luis Reformina
Chief Financial Officer
(Principal Financial Officer)

Date: May 5, 2021 By: /s/ Brian Wigginton
Brian Wigginton
Chief Accounting Officer

Document and Entity Information - shares	3 Months Ended Mar. 31, 2021	Apr. 28, 2021
Cover [Abstract]		
Entity Registrant Name	TURNING POINT BRANDS, INC.	
Entity Central Index Key	0001290677	
Current Fiscal Year End Date	--12-31	
Document Type	10-Q	
Amendment Flag	false	
Document Quarterly Report	true	
Document Period End Date	Mar. 31, 2021	
Document Fiscal Year Focus	2021	
Document Fiscal Period Focus	Q1	
Document Transition Report	false	
Entity File Number	001-37763	
Entity Incorporation, State or Country Code	DE	
Entity Tax Identification Number	20-0709285	
Entity Address, Address Line One	5201 Interchange Way	
Entity Address, City or Town	Louisville	
Entity Address, State or Province	KY	
Entity Address, Postal Zip Code	40229	
City Area Code	502	
Local Phone Number	778-4421	
Title of 12(b) Security	Common Stock, $0.01 par value	
Trading Symbol	TPB	
Security Exchange Name	NYSE	
Entity Current Reporting Status	Yes	
Entity Interactive Data Current	Yes	
Entity Filer Category	Accelerated Filer	
Entity Small Business	false	
Entity Emerging Growth Company	true	
Entity Ex Transition Period	true	
Entity Shell Company	false	
Entity Common Stock, Shares Outstanding		19,059,449

Consolidated Balance Sheets - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Current assets:		
Cash	$ 167,361	$ 41,765
Accounts receivable, net of allowances of $148 in 2021 and $150 in 2020	6,606	9,331
Inventories	98,351	85,856
Other current assets	24,866	26,451
Total current assets	297,184	163,403
Property, plant, and equipment, net	15,648	15,524
Deferred income taxes	0	610
Right of use assets	17,406	17,918
Deferred financing costs, net	464	641
Goodwill	159,808	159,621
Other intangible assets, net	78,945	79,422
Master Settlement Agreement (MSA) escrow deposits	31,477	32,074
Other assets	26,373	26,836
Total assets	627,305	496,049
Current liabilities:		
Accounts payable	24,166	9,201
Accrued liabilities	31,845	35,225
Current portion of long-term debt	5,000	12,000
Other current liabilities	205	203
Total current liabilities	61,216	56,629
Notes payable and long-term debt	424,802	302,112
Deferred income taxes	735	0
Lease liabilities	15,570	16,117
Other long-term liabilities	0	3,704
Total liabilities	502,323	378,562
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; $0.01 par value; authorized shares 40,000,000; issued and outstanding shares -0-	0	0
Additional paid-in capital	102,879	102,423
Cost of repurchased common stock (517,701 shares at March 31, 2021 and 398,670 shares at December 31, 2020)	(15,924)	(10,191)
Accumulated other comprehensive loss	(480)	(2,635)
Accumulated earnings	34,357	23,645
Non-controlling interest	3,954	4,050
Total stockholders' equity	124,982	117,487
Total liabilities and stockholders' equity	627,305	496,049
Common Stock, Voting [Member]		
Stockholders' equity:		
Common stock	196	195

Common Stock, Nonvoting [Member]		
Stockholders' equity:		
Common stock	$ 0	$ 0

Consolidated Balance Sheets (Parenthetical) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Current assets:		
Accounts receivable, allowance	$ 148	$ 150
Stockholders' equity:		
Preferred stock, par value (in dollars per share)	$ 0.01	$ 0.01
Preferred stock, shares authorized (in shares)	40,000,000	40,000,000
Preferred stock, shares issued (in shares)	0	0
Preferred stock, shares outstanding (in shares)	0	0
Repurchased common stock (in shares)	517,701	398,670
Common Stock, Voting [Member]		
Stockholders' equity:		
Common stock, par value (in dollars per share)	$ 0.01	$ 0.01
Common stock, shares authorized (in shares)	190,000,000	190,000,000
Common stock, shares issued (in shares)	19,576,821	19,532,464
Common stock, shares outstanding (in shares)	19,059,120	19,133,794
Common Stock, Nonvoting [Member]		
Stockholders' equity:		
Common stock, par value (in dollars per share)	$ 0.01	$ 0.01
Common stock, shares authorized (in shares)	10,000,000	10,000,000
Common stock, shares issued (in shares)	0	0
Common stock, shares outstanding (in shares)	0	0

Consolidated Statements of Income - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Consolidated Statements of Income [Abstract]		
Net sales	$ 107,641	$ 90,689
Cost of sales	54,380	49,258
Gross profit	53,261	41,431
Selling, general, and administrative expenses	28,912	32,394
Operating income	24,349	9,037
Interest expense, net	4,486	3,309
Investment income	(25)	(91)
Loss on extinguishment of debt	5,706	0
Net periodic income, excluding service cost	0	(87)
Income before income taxes	14,182	5,906
Income tax expense	2,654	1,407
Consolidated net income	11,528	4,499
Net loss attributable to non-controlling interest	(255)	0
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499
Basic income per common share:		
Net income attributable to Turning Point Brands, Inc. (in dollars per share)	$ 0.62	$ 0.23
Diluted income per common share:		
Net income attributable to Turning Point Brands, Inc. (in dollars per share)	$ 0.57	$ 0.22
Weighted average common shares outstanding:		
Basic (in shares)	19,093,961	19,689,446
Diluted (in shares)	22,665,067	20,106,800

Consolidated Statements of Comprehensive Income - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Consolidated Statements of Comprehensive Income [Abstract]		
Consolidated net income	$ 11,528	$ 4,499
Other comprehensive income, net of tax		
Amortization of unrealized pension and postretirement gain (loss), net of tax of $0 in 2021 and $2 in 2020	0	9
Unrealized loss on MSA investments, net of tax of $144 in 2021 and $0 in 2020	(452)	0
Foreign currency translation, net of tax of $0 in 2021 and 2020	318	0
Unrealized gain (loss) on derivative instruments, net of tax of $937 in 2021 and $624 in 2020	2,448	(1,615)
Other comprehensive income (loss), net of tax	2,314	(1,606)
Consolidated comprehensive income	13,842	2,893
Comprehensive (loss) income attributable to non-controlling interest	(96)	0
Comprehensive income attributable to Turning Point Brands, Inc.	$ 13,938	$ 2,893

Consolidated Statements of Comprehensive Income (Parenthetical) - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Other comprehensive income, net of tax		
Amortization of unrealized pension and postretirement gain (loss), tax	$ 0	$ 2
Unrealized loss on MSA investments, tax	144	0
Foreign currency translation, tax	0	0
Unrealized gain (loss) on derivative instruments, tax	$ 937	$ 624

Consolidated Statements of Cash Flows - USD ($) $ in Thousands	3 Months Ended Mar. 31, 2021	Mar. 31, 2020
Cash flows from operating activities:		
Consolidated net income	$ 11,528	$ 4,499
Adjustments to reconcile net income to net cash provided by operating activities:		
Loss on extinguishment of debt	5,706	0
Gain on sale of property, plant, and equipment	(2)	0
Depreciation expense	788	851
Amortization of other intangible assets	477	425
Amortization of deferred financing costs	604	552
Deferred income taxes	552	1,006
Stock compensation expense	1,498	455
Noncash lease expense	6	13
Gain on investments	(13)	0
Changes in operating assets and liabilities:		
Accounts receivable	2,735	2,596
Inventories	(12,461)	1,784
Other current assets	1,283	(2,420)
Other assets	464	(130)
Accounts payable	14,882	3,210
Accrued postretirement liabilities	0	(27)
Accrued liabilities and other	(3,806)	1,913
Net cash provided by operating activities	24,241	14,727
Cash flows from investing activities:		
Capital expenditures	(842)	(877)
Restricted cash, MSA escrow deposits	(14,920)	0
Proceeds on the sale of property, plant and equipment	2	0
Net cash used in investing activities	(15,760)	(877)
Cash flows from financing activities:		
Proceeds from Senior Secured Notes	250,000	0
Settlement of interest rate swaps	(3,573)	0
Payment of dividends	(958)	(886)
Payments of financing costs	(6,614)	(168)
Exercise of options	425	227
Redemption of options	(1,466)	0
Common stock repurchased	(5,733)	(2,627)
Net cash provided by (used in) financing activities	102,081	(9,694)
Net increase in cash	110,562	4,156
Effect of foreign currency translation on cash	101	0
Cash, beginning of period:		
Unrestricted	41,765	95,250

Restricted	35,074	32,074
Total cash at beginning of period	76,839	127,324
Cash, end of period:		
Unrestricted	167,361	99,406
Restricted	20,141	32,074
Total cash at end of period	187,502	131,480
Supplemental schedule of noncash financing activities:		
Dividends declared not paid	1,071	998
Accrued expenses for incurred financing costs	301	13
2018 First Lien Term Loan [Member]		
Cash flows from financing activities:		
Payments of term loan	(130,000)	(2,000)
Payments of financing costs	(200)	
IVG Note [Member]		
Cash flows from financing activities:		
Payments of term loan	$ 0	$ (4,240)

Consolidated Statements of Changes in Stockholders' Equity (Deficit) - USD ($) $ in Thousands	Common Stock [Member] Voting [Member]	Additional Paid-In Capital [Member]	Cost of Repurchased Common Stock [Member]	Accumulated Other Comprehensive Loss [Member]	Accumulated Earnings (Deficit) [Member]	Non-Controlling Interest [Member]	Total
Beginning balance at Dec. 31, 2019	$ 197	$ 125,469	$ 0	$ (3,773)	$ (15,308)	$ 0	$ 106,585
Beginning balance (Change in Accounting Principle [Member]) at Dec. 31, 2019	0	(24,939)	0	0	6,436		$ (18,503)
Beginning balance (in shares) at Dec. 31, 2019							19,680,673
Unrecognized pension and postretirement cost adjustment, net of tax	0	0	0	9	0		$ 9
Unrealized gain (loss) on MSA investments, net of tax							0
Unrealized gain (loss) on derivative instruments, net of tax of $937 in 2021 and $624 in 2020	0	0	0	(1,615)	0		(1,615)
Foreign currency translation, net of tax							0
Stock compensation expense	0	455	0	0	0		455
Exercise of options	$ 0	227	0	0	0		227
Exercise of options (in shares)	42,407						
Cost of repurchased common stock	$ 0	0	$ (2,627)	0	0		(2,627)
Cost of repurchased common stock (in shares)			(134,130)				
Dividends	0	0	$ 0	0	(998)		(998)
Net income	0	0	0	0	4,499		4,499
Ending balance at Mar. 31, 2020	197	101,212	(2,627)	(5,379)	(5,371)	0	$ 88,032
Ending balance (in shares) at Mar. 31, 2020							19,588,950
Beginning balance at Dec. 31, 2019	197	125,469	0	(3,773)	(15,308)	0	$ 106,585
Beginning balance (Change in Accounting Principle [Member]) at Dec. 31, 2019	0	(24,939)	0	0	6,436		$ (18,503)
Beginning balance (in shares) at Dec. 31, 2019							19,680,673
Ending balance at Dec. 31, 2020	195	102,423	(10,191)	(2,635)	23,645	4,050	$ 117,487
Ending balance (in shares) at Dec. 31, 2020							19,133,794
Unrecognized pension and postretirement cost adjustment, net of tax							$ 0

Unrealized gain (loss) on MSA investments, net of tax	0	0	0	(452)	0	0	(452)
Unrealized gain (loss) on derivative instruments, net of tax of $937 in 2021 and $624 in 2020	0	0	0	2,448	0	0	2,448
Foreign currency translation, net of tax	0	0	0	159	0	159	318
Stock compensation expense	0	1,498	0	0	0	0	1,498
Exercise of options	$ 1	424	0	0	0	0	425
Exercise of options (in shares)	44,357						
Redemption of options	$ 0	(1,466)	0	0	0	0	(1,466)
Cost of repurchased common stock	0	0	$ (5,733)	0	0	0	$ (5,733)
Cost of repurchased common stock (in shares)			(119,031)				(119,031)
Dividends	0	0	$ 0	0	(1,071)	0	$ (1,071)
Net income	0	0	0	0	11,783	(255)	11,528
Ending balance at Mar. 31, 2021	$ 196	$ 102,879	$ (15,924)	$ (480)	$ 34,357	$ 3,954	$ 124,982
Ending balance (in shares) at Mar. 31, 2021							19,059,120

Consolidated Statements of Changes in Stockholders' Equity (Deficit) (Parenthetical) - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Consolidated Statements of Change in Stockholders' Equity (Deficit) [Abstract]		
Unrecognized pension and postretirement cost adjustment, tax	$ 0	$ 2
Unrealized loss on MSA investments, tax	144	0
Unrealized loss on derivative instruments, tax	937	624
Foreign currency translation, tax	$ 0	$ 0

Description of Business and Basis of Presentation	3 Months Ended Mar. 31, 2021
Description of Business and Basis of Presentation [Abstract]	
Description of Business and Basis of Presentation	

Note 1. Description of Business and Basis of Presentation

Description of Business

Turning Point Brands, Inc. and its subsidiaries (collectively referred to herein as the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products with active ingredients. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® to our next generation products to fulfill evolving consumer preferences. We operate in three segments: (i) Zig-Zag Products, (ii) Stoker's Products, and (iii) NewGen Products. Our three focus segments are led by our core, proprietary brands – *Zig-Zag*® in the Zig-Zag Products segment; *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment; and *Nu-X*™, *Solace*® along with our distribution platforms (*Vapor Beast*®*, VaporFi*® and *Direct Vapor*®*)* in the NewGen Products segment. The Company's products are available in more than 210,000 retail outlets in North America.

Basis of Presentation

The accompanying unaudited interim, consolidated financial statements have been prepared in accordance with the accounting practices described in the Company's audited, consolidated financial statements as of and for the year ended December 31, 2020. In the opinion of management, the unaudited, interim, consolidated financial statements included herein contain all adjustments necessary to present fairly the financial position, results of operations, and cash flows of the Company for the periods indicated. Such adjustments, other than nonrecurring adjustments separately disclosed, are of a normal and recurring nature. The operating results for interim periods are not necessarily indicative of results to be expected for a full year or future interim periods. The unaudited, interim, consolidated financial statements should be read in conjunction with the Company's audited, consolidated financial statements and accompanying notes as of and for the year ended December 31, 2020. The accompanying interim, consolidated financial statements are presented in accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC")and, accordingly, do not include all the disclosures required by generally accepted accounting principles in the United States ("GAAP") with respect to annual financial statements.

Summary of Significant Accounting Policies	3 Months Ended Mar. 31, 2021
Summary of Significant Accounting Policies [Abstract]	
Summary of Significant Accounting Policies	

Note 2. Summary of Significant Accounting Policies

Consolidation

The consolidated financial statements include the accounts of the Company, its subsidiaries, all of which are wholly-owned, and variable interest entities ("VIEs") for which the Company is considered the primary beneficiary. All significant intercompany transactions have been eliminated.

Revenue Recognition

The Company recognizes revenues in accordance with Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers (Topic 606), which includes excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and incentives, upon delivery of goods to the customer – at which time the Company's performance obligation is satisfied – at an amount that the Company expects to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. The Company excludes from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars or vaping products billed to customers).

The Company records an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. The Company records sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers, retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.

A further requirement of ASU 2014-09 is for entities to disaggregate revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The Company's management views business performance through segments that closely resemble the performance of major product lines. Thus, the primary and most useful disaggregation of the Company's contract revenue for decision making purposes is the disaggregation by segment which can be found in Note 18 of Notes to Consolidated Financial Statements. An additional disaggregation of contract revenue by sales channel can be found within Note 18 as well.

Shipping Costs

The Company records shipping costs incurred as a component of selling, general, and administrative expenses. Shipping costs incurred were approximately $5.9 million and $5.3 million for the three months ending March 31, 2021 and 2020, respectively.

Inventories

Inventories are stated at the lower of cost or net realizable value. Effective January 1, 2021, the Company changed its method of accounting for inventory using the last-in, first-out ("LIFO") method to the first-in, first-out ("FIFO") method. The Company applied this change retrospectively to all prior periods presented, which is discussed further in Note 6. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing.

Fair Value

GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3).

The three levels of the fair value hierarchy under GAAP are described below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date.
- Level 2 – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Derivative Instruments

Foreign Currency Forward Contracts: The Company enters into foreign currency forward contracts to hedge a portion of its exposure to changes in foreign currency exchange rates on inventory purchase commitments. The Company accounts for its forward contracts under

the provisions of ASC 815, Derivatives and Hedging. Under the Company's policy, the Company may hedge up to 100% of its anticipated purchases of inventory in the denominated invoice currency over a forward period not to exceed twelve months. The Company may also, from time to time, hedge up to ninety percent of its non-inventory purchases in the denominated invoice currency. Forward contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these forward contracts are transferred from other comprehensive income into inventory as the related inventories are received and are transferred to net income as inventory is sold. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Interest Rate Swap Agreements: The Company enters into interest rate swap contracts to manage interest rate risk and reduce the volatility of future cash flows. The Company accounts for its interest rate swap contracts under the provisions of ASC 815, Derivatives and Hedging. Swap contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these swap contracts are transferred from other comprehensive income into net income upon settlement of the derivative position or at maturity of the interest rate swap contract. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Risks and Uncertainties

Manufacturers and sellers of tobacco products are subject to regulation at the federal, state, and local levels. Such regulations include, among others, labeling requirements, limitations on advertising, and prohibition of sales to minors. The tobacco industry is likely to continue to be heavily regulated. There can be no assurance as to the ultimate content, timing, or effect of any regulation of tobacco products by any federal, state, or local legislative or regulatory body, nor can there be any assurance that any such legislation or regulation would not have a material adverse effect on the Company's financial position, results of operations, or cash flows. In a number of states targeted flavor bans have been proposed or enacted legislatively or by the administrative process. Depending on the number and location of such bans, that legislation or regulation could have a material adverse effect on the Company's financial position, results of operations or cash flows. Food and Drug Administration ("FDA") continues to consider various restrictive regulations around our products, including targeted flavor bans; however, the details, timing, and ultimate implementation of such measures remain unclear.

The tobacco industry has experienced, and is experiencing, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes for injuries allegedly caused by smoking or exposure to smoke. However, several lawsuits have been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. Typically, such claims assert that use of smokeless products is addictive and causes oral cancer. Additionally, several lawsuits have been brought against manufacturers and distributors of NewGen products due to malfunctioning devices. There can be no assurance the Company will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Master Settlement Agreement (MSA): Pursuant to the Master Settlement Agreement (the "MSA") entered into in November 1998 by most states (represented by their attorneys general acting through the National Association of Attorneys General) and subsequent states' statutes, a "cigarette manufacturer" (which is defined to include a manufacturer of make-your-own ("MYO") cigarette tobacco) has the option of either becoming a signatory to the MSA or opening, funding, and maintaining an escrow account to have funds available for certain potential tobacco-related liabilities with sub-accounts on behalf of each settling state. Such companies are entitled to direct the investment of the escrowed funds and withdraw any appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state's escrow statute to pay a final judgement to that state's plaintiffs in the event of such a final judgement against the Company. The Company chose to open and fund an escrow account as its method of compliance. It is the Company's policy to record amounts on deposit in the escrow account for prior years as a non-current asset. Each year's annual obligation is required to be deposited in the escrow account by April 15 of the following year. In addition to the annual deposit, many states have elected to require quarterly deposits for the previous quarter's sales. As of March 31, 2021, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $31.5 million. At December 31, 2020, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $32.1 million. Effective in the third quarter of 2017, the Company no longer sells any product covered under the MSA. Thus, absent a change in legislation, the Company will no longer be required to make deposits to the MSA escrow account.

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury Notes, and Treasury Bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; any investment in an unrealized loss position will be held until the value is recovered, or until maturity. The following shows the fair value of the MSA escrow account as of March 31, 2021 and December 31, 2020.

Fair values for the U.S. Governmental agency obligations are Level 2. The following tables show cost and estimated fair value of the assets held in the MSA account as well as the maturities of the U.S. Governmental agency obligations held in such account for the periods indicated.

	As of March 31, 2021				As of December 31, 2020
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cost and Estimated Fair Value
Cash and cash equivalents	$17,141	$ -	$ -	$ 17,141	$ 32,074
U.S. Governmental agency obligations (unrealized loss position < 12 months)	14,933	-	(597)	14,336	-
	$32,074	$ -	$ (597)	$ 31,477	$ 32,074

	As of March 31, 2021
Less than one year	$ -
One to five years	-
Five to ten years	12,984
Greater than ten years	1,949
Total	$ 14,933

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of March 31, 2021	Deposits as of December 31, 2020
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	$ 32,074	$ 32,074

Food and Drug Administration: On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (the "FSPTCA") authorized the FDA to immediately regulate the manufacturing, sale, and marketing of four categories of tobacco products – cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. On August 8, 2016, the FDA deeming regulation became effective. The deeming regulation gave the FDA the authority to additionally regulate cigars, pipe tobacco, e-cigarettes, vaporizers, and e-liquids as "deemed" tobacco products under the FSPTCA.

The FDA assesses tobacco product user fees on six classes of regulated tobacco products and computes user fees using a methodology similar to the methodology used by the U.S Department of Agriculture to compute the Tobacco Transition Payment Program ("TTPP," also known as the "Tobacco Buyout") assessment. First, the total, annual, congressionally established user fee assessment is allocated among the various classes of tobacco products using the federal excise tax weighted market share of tobacco products subject to regulation. Then, the assessment for each class of tobacco products is divided among individual manufacturers and importers.

In August 2016, the FDA's regulatory authority under the Tobacco Control Act (the "TCA") was extended to all tobacco products not previously covered, including: (i) certain NewGen products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco); (iii) pipe tobacco; (iv) hookah products; and (v) any other tobacco product "newly deemed" by the FDA. These "deeming regulations" apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Accordingly, the FDA has since regulated our cigar and cigar wrap products as well as our vapor products containing tobacco-derived nicotine and products intended or reasonably expected to be used to consume such e-liquids.

Under the deeming regulations, the FDA has responsibility for conducting premarket review of "new tobacco products"—defined as those products not commercially marketed in the United States as of February 15, 2007. There are three pathways for obtaining premarket authorization, including submission of a premarket tobacco product application ("PMTA").

We submitted premarket filings prior to the September 9, 2020 deadline for certain of our products and intend to supplement and complete the applications within FDA's discretionary timeline. A successful PMTA must demonstrate that the subject product is "appropriate for the protection of public health," taking into account the effect of the marketing of the product on all sub-populations while a Substantial Equivalence Report must demonstrate that a new product either has the same characteristics as its predicate product or different characteristics, but does not raise different questions of public health. The FDA is required under a court order to issue a decision related to the authorization of these products within twelve months; otherwise, these products cease to be subject to the FDA's continued compliance policy, which allows products to be marketed pending premarket review. FDA may, in its discretion and on a case-by-case basis, deviate from this policy.

FDA has issued a number of proposed rules related to premarket filings; however, those rules were not finalized until after September 9, 2020. As such, it is unclear whether and how FDA will apply any new or additional requirements to currently pending applications. We believe we have products that meet the requisite standards and have filed premarket filings supporting a showing of the respective required standard. However, there is no assurance that the FDA's guidance or ultimate regulation will not change, or that the FDA will review and authorize the products in the requisite time period or that, in that circumstance, the FDA will use its discretion on a case-

by-case basis to allow for the continued marketing of the products, or that unforeseen circumstances will not arise that prevent us from sufficiently supplementing or completing our applications or otherwise increase the amount of time and money we are required to spend to receive all necessary marketing orders. Although we filed many premarket applications in a timely manner, no assurance can be given that the applications will ultimately be successful. This may result in the prioritization of supplementing or completing applications for high priority SKUs in our inventory position, which could adversely impact future revenues.

In addition, we currently distribute many third-party manufactured vapor products for which we will be completely dependent on the manufacturer complying with the premarket filing requirements. There can be no assurance that these third-party products will receive a marketing order. While we will take measures to pursue regulatory compliance for our own privately-branded or proprietary vape products that compete with these third-party products, there is no assurance that such proprietary products would be as successful in the marketplace or can fully displace third-party products that are currently being distributed by us, which could adversely affect our results of operations and liquidity. For a period of time after the filing deadline, we expect there to be a lack of enforcement, which may adversely affect our ability to compete in the marketplace against those who continue to sell unauthorized products.

In January 2020, FDA issued a Guidance document (the "January 2020 Guidance") that stated it would be prioritizing enforcement of several categories of electronic nicotine delivery system ("ENDS") products: (1) flavored, cartridge-based ENDS products (other than tobacco- or menthol-flavored ENDS products; (2) ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; (3) ENDS products targeted to minors or whose marketing is likely to promote the use of ENDS by minors; and (4) ENDS products offered for sale after May 12, 2020, premarket application deadline (later updated to reflect the September 9, 2020 filing deadline) for which the manufacturer has not submitted a premarket application. The policy outlined several factors the agency would consider in its enforcement of flavored cigars going forward but did not restrict those products as it had considered in the March 2019 Guidance proposal. The FDA's policy on these and other regulated products may change or expand over time in ways not yet known and may significantly impact our products or our premarket filings.

Recent Accounting Pronouncements Adopted

In December 2019, the FASB issued ASU 2019-12 to simplify the accounting in ASC 740, *Income Taxes*. This guidance removes certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. This guidance also clarifies and simplifies other areas of ASC 740. This ASU will be effective beginning in the first quarter of the Company's fiscal year 2021. Certain amendments in this update must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The ASU was effective for the Company beginning in the first quarter of 2021. The ASU did not have an impact to the Company's financial statements and related disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)*. This guidance simplifies the accounting for convertible debt instruments by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the convertible instrument. This guidance also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company early adopted this ASU effective January 1, 2021 using the full retrospective method of transition. The adoption resulted in a $7.1 million increase in Accumulated earnings, a $24.2 million increase in Notes payable and long-term debt, a $6.3 million decrease in deferred income taxes and a $24.9 million decrease in Additional paid-in capital as of December 31, 2020, and a $2.2 million decrease in Accumulated deficit and a $24.9 million decrease in Additional paid-in capital as of December 31, 2019. Interest expense will decrease by $6.7 million annually and weighted average diluted common shares outstanding will increase by approximately 3.2 million shares.

Acquisitions

Acquisitions [Abstract]
Acquisitions

3 Months Ended
Mar. 31, 2021

Note 3. Acquisitions

ReCreation Marketing

In July 2019, the Company obtained a 30% stake in a Canadian distribution entity, ReCreation for $1 million paid at closing. In November 2020, the Company invested an additional $1 million related to our 30% stake. In November 2020, The Company also invested an additional $2 million increasing its ownership interest to 50%. The Company received board seats aligned with its ownership position. The Company also provided a $2.0 million unsecured loan to ReCreation bearing interest at 8% per annum and maturing November 19, 2022. The Company has determined that ReCreation is a VIE due to its required subordinated financial support. The Company has determined it is the primary beneficiary due to its 50% equity interest, additional subordinated financing and distribution agreement with ReCreation for the sale of the Company's products. As a result, the Company began consolidating ReCreation effective November 2020. As of March 31, 2021, the Company had not completed the accounting for the acquisition. The following table summarizes the consideration transferred and calculation of goodwill based on excess of the acquisition price over the estimated fair value of the identifiable net assets acquired and are based on management's preliminary estimates:

Total consideration transferred	$ 4,000
Adjustments to consideration transferred:	
Cash acquired	(3,711)
Working capital	418
Debt eliminated in consolidation	2,000
Adjusted consideration transferred	2,707
Assets acquired:	
Working capital (primarily AR and inventory)	1,551
Fixed assets and Other long term assets	70
Other liabilities	(203)
Non-controlling interest	(4,050)
Net assets acquired	$(2,632)
Goodwill	$ 5,339

The goodwill of $5.3 million consists of the synergies expected from combining the operations and is currently not deductible for tax purposes.

Standard Diversified Inc. ("SDI") Reorganization

On July 16, 2020, the Company completed its merger with SDI, whereby SDI was merged into a wholly-owned subsidiary of the Company in a tax-free downstream merger. Under the terms of the agreement, the holders of SDI's Class A Common Stock and SDI's Class B Common Stock (collectively, "SDI Common Stock") received in the aggregate, in return for their SDI Common Stock, TPB Voting Common Stock ("TPB Common Stock") at a ratio of 0.52095 shares of TPB Common Stock for each share of SDI Common Stock at the time of the merger. SDI divested its assets, other than SDI's TPB Common Stock, prior to close such that the net liabilities at closing were minimal and the only assets that SDI retained were the remaining TPB Common Stock holdings. The transaction was accounted for as an asset purchase for $236.0 million in

consideration, comprised of 7,934,704 shares of TPB Common Stock valued at $234.3 million plus transaction costs and assumed net liabilities. $236.0 million was assigned to the 8,178,918 shares of TPB Common Stock acquired. The 244,214 shares of TPB Common Stock acquired in excess of the shares issued were retired resulting in a charge of $1.7 million recorded in Accumulated earnings (deficit). The Company no longer has a controlling shareholder.

Durfort Holdings

In June 2020, the Company purchased certain tobacco assets and distribution rights from Durfort Holdings S.R.L. ("Durfort") and Blunt Wrap USA for $47.7 million in total consideration, comprised of $37.7 million in cash, including $1.7 million of capitalized transaction costs, and a $10.0 million unsecured subordinated promissory note ("Promissory Note"). With this transaction, the Company acquired co-ownership in the intellectual property rights of all of Durfort's and Blunt Wrap USA's Homogenized Tobacco Leaf ("HTL") cigar wraps and cones. The Company also entered into an exclusive Master Distribution Agreement to market and sell the original *Blunt Wrap*® cigar wraps within the USA which was effective October 9, 2020. Durfort is an industry leader in alternative cigar and cigar wrap manufacturing and distribution. Blunt Wrap USA has been an innovator of new products in the smoking alternative market since 1997 and has secured patents in the USA and internationally for novel smoking wrappers and cones. The transaction was accounted for as an asset purchase with $42.2 million assigned to intellectual property, which has an indefinite life, and $5.5 million assigned to the Master Distribution Agreement, which has a 15 year life. Both assets are currently deductible for tax purposes.

Derivative Instruments	3 Months Ended Mar. 31, 2021
Derivative Instruments [Abstract]	
Derivative Instruments	**Note 4. Derivative Instruments**

Foreign Currency

The Company's policy is to manage the risks associated with foreign exchange rate movements. The policy allows hedging up to 100% of its anticipated purchases of inventory over a forward period that will not exceed 12 rolling and consecutive months. The Company may, from time to time, hedge currency for non-inventory purchases, *e.g.*, production equipment, not to exceed 90% of the purchase price. During 2020, the Company executed various forward contracts, which met hedge accounting requirements, for the purchase of €19.7 million and sale of €21.4 million with maturity dates ranging from December 2020 to November 2021. At March 31, 2021, the Company had forward contracts for the purchase of €13.1 million and sale of €14.3 million. The foreign currency contracts' fair value at March 31, 2021, resulted in an asset of $0.1 million included in Other current assets and a liability of $0.0 million included in Accrued liabilities. At December 31, 2020, the Company had forward contracts for the purchase of €18.0 million and sale of €19.6 million. The foreign currency contracts' fair value at December 31, 2020, resulted in an asset of $0.4 million included in Other current assets and a liability of $0.0 million included in Accrued liabilities.

Interest Rate Swaps

The Company's policy is to manage interest rate risk by reducing the volatility of future cash flows associated with debt instruments bearing interest at variable rates. In March 2018, the Company executed various interest rate swap agreements for a notional amount of $70 million with an expiration of December 2022. The swap agreements fixed LIBOR at 2.755%. The swap agreements met the hedge accounting requirements; thus, any change in fair value was recorded to other comprehensive income. The Company used the Shortcut Method to account for the swap agreements. The Shortcut Method assumes the hedge to be perfectly effective; thus, there is no ineffectiveness to be recorded in earnings. The swap agreements' fair values at December 31, 2020, resulted in a liability of $3.7 million included in other long-term liabilities. Losses of $0.2 million were reclassified into interest expense for the three months ended March 31, 2020. The Company terminated the interest rate swap agreement in conjunction with the prepayment of all outstanding amounts related to the 2018 First Lien Credit Facility (as defined) in the first quarter 2021 with the settlement payment made by the Company in the amount of $3.6 million, which was reclassified out of accumulated other comprehensive loss into loss on extinguishment of debt.

Fair Value of Financial Instruments	3 Months Ended Mar. 31, 2021
Fair Value of Financial Instruments [Abstract]	
Fair Value of Financial Instruments	

Note 5. Fair Value of Financial Instruments

The estimated fair value amounts have been determined by the Company using the methods and assumptions described below. However, considerable judgment is required to interpret market data to develop estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Cash and Cash Equivalents

Cash and cash equivalents are, by definition, short-term. Thus, the carrying amount is a reasonable estimate of fair value.

Accounts Receivable

The fair value of accounts receivable approximates their carrying value due to their short-term nature.

Long-Term Debt

The Company's Senior Secured Notes (as defined) bear interest at a rate of 5.625% per year and the fair value of the Senior Secured Notes approximate their carrying value of $250 million due to the recency of the notes' issuance, related to the quarter ended March 31, 2021.

The Company's 2018 First Lien Credit Facility bore interest at variable rates that fluctuated with market rates, the carrying values of the 2018 First Lien Credit Facility approximated its fair value. As of December 31, 2020, the fair value of the 2018 First Lien Term Loan approximated $130.0 million. The Company prepaid all outstanding amounts related to the 2019 First Lien Credit Facility in the first quarter 2021.

The Convertible Senior Notes (as defined) bear interest at a rate of 2.50% per year and the fair value of the Convertible Senior Notes without the conversion feature approximated $156.4 million, with a carrying value of $172.5 million as of March 31, 2021. As of December 31, 2020, the fair value of the Convertible Senior Notes approximated $155.3 million, with a carrying value of $172.5 million.

Note Payable – Promissory Note

The fair value of the Promissory Note approximates its carrying value of $10.0 million due to the recency of the note's issuance, related to the quarter ended March 31, 2021.

Note Payable – Unsecured Loan

The fair value of the Unsecured Note approximates its carrying value of $7.5 million due to the recency of the note's issuance, related to the quarter ended March 31, 2021.

See Note 11, "Notes Payable and Long-Term Debt", for further information regarding the Company's long-term debt.

Foreign Exchange

At March 31, 2021, the Company had forward contracts for the purchase of €13.1 million and sale of €14.3 million. The fair value of the foreign exchange contracts are based upon quoted market prices for similar instruments, thus leading to them being categorized as level 2 instruments within the fair value hierarchy, and resulted in an asset of $0.1 million and a liability of $0.0 million as of March 31, 2021. At December 31, 2020, the Company had forward contracts for the purchase of €18.0 million and sale of €19.6 million resulting in an asset of $0.4 million and a liability of $0.0 million as of December 31, 2020.

Interest Rate Swaps

The Company had swap contracts for a total notional amount of $70 million at December 31, 2020. The fair values of the swap contracts were based upon quoted market prices for similar instruments, thus leading to them being categorized as level 2 instruments within the fair value hierarchy, and resulted in a liability of $3.7 million December 31, 2020. The Company terminated the swap contracts in conjunction with the prepayment of all outstanding amounts under the 2018 First Lien Credit Facility in the first quarter 2021.

Inventories

Inventories [Abstract]
Inventories

3 Months Ended
Mar. 31, 2021

Note 6. Inventories

Effective January 1, 2021, the Company changed its method of accounting for inventory from the LIFO method to the FIFO method. Costs determined using the LIFO method were utilized on approximately 45.1% of inventories at December 31, 2020, prior to this change in method, and consisted primarily of tobacco inventory. The Company believes the FIFO method is preferable because it: (i) conforms the accounting for all inventory with the method utilized for the majority of its inventory; (ii) better represents how management assesses and reports on the performance of the tobacco and other LIFO product lines as LIFO is excluded from management's economic decision making; (iii) better aligns the accounting with the physical flow of that inventory; and (iv) better reflects inventory at more current costs.

The Company applied this change retrospectively to all prior periods presented. This change resulted in a $4.5 million increase in Accumulated earnings as of December 31, 2020, from $12.1 million to $16.6 million and a $4.3 million decrease in Accumulated deficit as of December 31, 2019, from $15.3 million to $11.0 million. In addition, the following financial statement line items in the Company's Consolidated Balance Sheets as of December 31, 2020 and its Consolidated Statements of Income and Consolidated Statements of Cash Flows for the three months ended March 31, 2020 were adjusted as follows:

Consolidated Statement of Income	For the three months ended March 31, 2020		
	As Originally Reported	Effect of Change (a)	As Adjusted
Cost of sales	$ 49,258	$ -	$ 49,258
Income before income taxes	$ 4,221	$ -	$ 4,221
Income tax expense	$ 946	$ -	$ 946
Net income attributable to Turning Point Brands, Inc.	$ 3,275	$ -	$ 3,275
Earnings per common share:			
Basic	$ 0.17	$ -	$ 0.17
Diluted	$ 0.16	$ -	$ 0.16

Consolidated Balance Sheets	December 31, 2020		
	As Originally Reported	Effect of Change	As Adjusted
Inventories	$ 79,750	$ 6,106	$ 85,856
Deferered income taxes	$ 4,082	$ 1,584	$ 5,666
Accumulated earnings (deficit)	$ 12,058	$ 4,522	$ 16,580

Consolidated Statement of Cash Flows	For the three months ended March 31, 2020		
	As Originally Reported	Effect of Change (a)	As Adjusted
Consolidated net income	$ 3,275	$ -	$ 3,275
Deferred income taxes	$ 545	$ -	$ 545
Inventories	$ 1,784	$ -	$ 1,784

(a) There was no LIFO impact for the three months ended March 31, 2020.

The components of inventories are as follows:

	March 31, 2021	December 31, 2020
Raw materials and work in process	$ 7,519	$ 8,137
Leaf tobacco	41,707	32,948
Finished goods - Zig-Zag Products	21,477	14,903
Finished goods - Stoker's Products	9,777	9,727
Finished goods - NewGen products	16,668	18,916
Other	1,203	1,225
Inventory	$ 98,351	$ 85,856

The inventory valuation allowance was $9.6 million and $9.9 million as of March 31, 2021, and December 31, 2020, respectively.

Other Current Assets	3 Months Ended Mar. 31, 2021
Other Current Assets [Abstract]	
Other Current Assets	**Note 7. Other Current Assets**

Other current assets consist of:

	March 31, 2021	December 31, 2020
Inventory deposits	$ 7,369	$ 7,113
Insurance deposit	3,000	3,000
Prepaid taxes	526	813
Other	13,971	15,525
Total	$ 24,866	$ 26,451

Property, Plant, and Equipment	3 Months Ended Mar. 31, 2021
Property, Plant, and Equipment [Abstract]	
Property, Plant, and Equipment	**Note 8. Property, Plant, and Equipment**

Property, plant, and equipment consists of:

	March 31, 2021	December 31, 2020
Land	$ 22	$ 22
Buildings and improvements	2,750	2,750
Leasehold improvements	4,702	4,702
Machinery and equipment	16,499	15,612
Furniture and fixtures	9,025	9,025
Gross property, plant and equipment	32,998	32,111
Accumulated depreciation	(17,350)	(16,587)
Net property, plant and equipment	$ 15,648	$ 15,524

Other Assets

3 Months Ended
Mar. 31, 2021

Other Assets [Abstract]

Other Assets

Note 9. Other Assets

Other assets consist of:

	March 31, 2021	December 31, 2020
Equity investments	$ 24,016	$ 24,018
Other	2,357	2,818
Total	$ 26,373	$ 26,836

Accrued Liabilities	3 Months Ended Mar. 31, 2021
Accrued Liabilities [Abstract]	
Accrued Liabilities	**Note 10. Accrued Liabilities**

Accrued liabilities consist of:

	March 31, 2021	December 31, 2020
Accrued payroll and related items	$ 3,664	$ 9,459
Customer returns and allowances	5,683	5,259
Taxes payable	7,025	4,326
Lease liabilities	3,269	3,228
Accrued interest	2,924	2,096
Other	9,280	10,857
Total	$ 31,845	$ 35,225

Notes Payable and Long-Term Debt	3 Months Ended Mar. 31, 2021
Notes Payable and Long-Term Debt [Abstract]	
Notes Payable and Long-Term Debt	**Note 11. Notes Payable and Long-Term Debt**

Notes payable and long-term debt consists of the following in order of preference:

	March 31, 2021	December 31, 2020
Senior Secured Notes	$ 250,000	$ -
2018 First Lien Term Loan	-	130,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	10,000
Note payable - Unsecured Loan	7,485	7,485
Gross notes payable and long-term debt	439,985	319,985
Less deferred finance charges	(10,183)	(5,873)
Less current maturities	(5,000)	(12,000)
Notes payable and long-term debt	$ 424,802	$ 302,112

Senior Secured Notes

On February 11, 2021, the Company closed a private offering (the "Offering") of $250 million aggregate principal amount of its 5.625% senior secured notes due 2026 (the "Senior Secured Notes"). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. Interest on the Senior Secured Notes is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on August 15, 2021.The Company used the proceeds from the Offering (i) to repay all obligations under and terminate the 2018 First Lien Credit Facility, (ii) to pay related fees, costs, and expenses and (iii) for general corporate purposes.

Obligations under the Senior Secured Notes are guaranteed by the Company's existing and future wholly-owned domestic subsidiaries (the "Guarantors") that guarantee any Credit Facility (as defined in the Indenture governing the Senior Secured Notes or the "Senior Secured Notes Indenture") or capital markets debt securities of the Company or Guarantors in excess of $15.0 million. The Senior Secured Notes and the related guarantees are secured by first-priority liens on substantially all of the assets of the Company and the Guarantors, subject to certain exceptions.

The Company may redeem the Senior Secured Notes, in whole or in part, at any time prior to February 15, 2023, at a price equal to 100% of the principal amount of the Notes redeemed plus accrued and unpaid interest, if any, to, but excluding the applicable redemption date, plus a "make-whole" premium. Thereafter, the Company may redeem the Senior Secured Notes, in whole or in part, at established redemption prices, set forth in the Senior Secured Notes Indenture, plus accrued and unpaid interest, if any. In addition, on or prior to February 15, 2023, the Company may redeem up to 40% of the aggregate principal amount of the Senior Secured Notes with the net cash proceeds from certain equity offerings at a redemption price equal to 105.625%, plus accrued and unpaid interest, if any to the redemption date; provided, however, that at least 50% of the original aggregate principal amount of the Senior Secured Notes (calculated after giving effect to the issuance of any additional notes) remains outstanding. In addition, at any time and from time to time prior to February 15, 2023, but not more than once in any twelve-month period, the Company may redeem up to 10% of the aggregate principal amount of the Senior Secured Notes at a redemption price of 103% of the aggregate principal amount of Senior Secured Notes redeemed plus accrued and unpaid interest, if any to but not including the redemption date, on the Senior Secured Notes to be redeemed.

If the Company experiences a change of control (as defined in the Senior Secured Notes Indenture), the Company must offer to repurchase the Senior Secured Notes at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest.

The Indenture contains covenants that, among other things, restrict the ability of the Company and its restricted subsidiaries to: (i) grant or incur liens; (ii) incur, assume or guarantee additional indebtedness; (iii) sell or otherwise dispose of assets, including capital stock of subsidiaries; (iv) make certain investments; (v) pay dividends, make distributions or redeem or repurchase capital stock; (vi) engage in certain transactions with affiliates; and (vii) consolidate or merge with or into, or sell substantially all of our assets to another entity. These covenants are subject to a number of limitations and exceptions set forth in the Indenture.

The Company incurred debt issuance costs attributable to the issuance of the Senior Secured Notes of $6.4 million which are amortized to interest expense using the effective interest method over the expected life of the Senior Secured Notes.

The Indenture provides for customary events of default.

2021 Revolving Credit Facility

In connection with the Offering, the Company also entered into a new $25 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto (the "Lenders") and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). The 2021 Revolving Credit Facility provides for a revolving line of credit of up to $25.0 million. Letters of credit are limited to $10 million (and are a part of, and not in addition to, the revolving line of credit). The Company has not drawn any borrowings under the 2021 Revolving Credit Facility but does have letters of credit of approximately $3.6 million outstanding under the facility. The 2021 Revolving Credit Facility will mature on August 11, 2025 if none of the Company's Convertible Senior Notes are outstanding, and if any Convertible Senior Notes are outstanding, the date which is 91 days prior to the maturity date of July 15, 2024 for such Convertible Senior Notes.

Interest is payable on the 2021 Revolving Credit Facility at a fluctuating rate of interest determined by reference to the Eurodollar rate plus an applicable margin of 3.50% (with step-downs upon de-leveraging). The Company also has the option to borrow at a rate determined by reference to the base rate.

The obligations under the 2021 Revolving Credit Agreement are guaranteed on a joint and several basis by the Guarantors. The Company's and Guarantors' obligations under the 2021 Revolving Credit Facility are secured on a pari passu basis with the Senior Secured Notes.

The 2021 Revolving Credit Agreement contains covenants that are substantially the same as the covenants in the Senior Secured Notes Indenture. The 2021 Revolving Credit Facility also requires the maintenance of a Consolidated Leverage Ratio (as defined in the 2021 Revolving Credit Agreement) of 5.50 to 1.00 (with a step down to 5.25 to 1.00 beginning with the fiscal quarter ending March 31, 2023) at the end of each fiscal quarter when extensions of credit under the 2021 Revolving Credit Facility and certain drawn and undrawn letters of credit (excluding (a) letters of credit that have been cash collateralized and (b) letters of credit having an aggregate face amount less than $5,000,000) in the aggregate outstanding exceeds 35% of the total commitments under the 2021 Revolving Credit Facility.

The Company incurred debt issuance costs attributable to the issuance of the 2021 Revolving Credit Facility of $0.5 million which are amortized to interest expense using the effective interest method over the expected life of the 2021 Revolving Credit Facility.

The 2021 Revolving Credit Agreement provides for customary events of default.

2018 Credit Facility

On March 7, 2018, the Company entered into $250 million of credit facilities consisting of a $160 million 2018 First Lien Term Loan and a $50 million 2018 Revolving Credit Facility (collectively, the "2018 First Lien Credit Facility"), in each case, with Fifth Third Bank, as administrative agent, and other lenders, in addition to a $40 million 2018 Second Lien Term Loan (the "2018 Second Lien Credit Facility," and, together with the 2018 First Lien Credit Facility, the "2018 Credit Facility") with Prospect Capital Corporation, as administrative agent, and other lenders. The 2018 Credit Facility contained a $40 million accordion feature.

The 2018 Credit Facility contained customary events of default including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts, and change in control defaults. The 2018 Credit Facility also contained certain negative covenants customary for facilities of these types including covenants that, subject to exceptions described in the 2018 Credit Facility, restrict the ability of the Company and its subsidiary guarantors: (i) to pledge assets, (ii) to incur additional indebtedness, (iii) to pay dividends, (iv) to make distributions, (v) to sell assets, and (vi) to make investments. See Note 19, "Dividends and Share Repurchase", for further information regarding dividend restrictions.

2018 First Lien Credit Facility: The 2018 First Lien Term Loan and the 2018 Revolving Credit Facility bore interest at LIBOR plus a spread of 2.75% to 3.50% based on the Company's senior leverage ratio. The 2018 First Lien Term Loan had quarterly required payments of $2.0 million beginning June 30, 2018, increasing to $3.0 million on June 30, 2020, and increasing to $4.0 million on June 30, 2022. The 2018 First Lien Credit Facility had a maturity date of March 7, 2023. The 2018 First Lien Term Loan was secured by a first priority lien on substantially all of the assets of the borrowers and the guarantors thereunder, other than certain excluded assets (the "Collateral"). In connection with the Convertible Senior Notes offering, the Company entered into a First Amendment ("the Amendment") to the First Lien Credit Agreement, with Fifth Third Bank, as administrative agent, and other lenders and certain other lender parties thereto. The Amendment was entered into primarily to permit the Company to issue up to $200 million of convertible senior notes, enter into certain capped call transactions in connection with the issuance of such notes and to use the proceeds from the issuance of the notes to repay amounts outstanding under the 2018 Second Lien Credit Facility and use the remaining proceeds for acquisitions and investments. In connection with the Amendment, fees of $0.7 million were incurred. The 2018 First Lien Credit Facility contained certain financial covenants, which were amended in connection with the Convertible Senior Notes offering in the third quarter 2019. The covenants included maximum senior leverage ratio of 3.00x with step-downs to 2.50x, a maximum total leverage ratio of 5.50x with step-downs to 5.00x, and a minimum fixed charge coverage ratio of 1.20x. In the first quarter of 2020, the financial covenants were amended to permit certain add-backs related to PMTA in the definition of Consolidated EBITDA for the period of October 1, 2019 until September 30, 2020. In connection with the Amendment, fees of $0.2 million were incurred. The Company used a portion of the proceeds from the issuance of the Senior Secured Notes to prepay all outstanding amounts under and terminate the 2018 First Lien Credit Facility in the first quarter 2021 in the amount of $130.0 million, and the transaction resulted in a $5.7 million loss on extinguishment of debt.

Convertible Senior Notes

In July 2019, the Company closed an offering of $172.5 million in aggregate principal amount of its 2.50%Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes will mature on July 15, 2024, unless earlier repurchased, redeemed or converted. The Convertible Senior Notes are senior unsecured obligations of the Company.

The Convertible Senior Notes are convertible into approximately 3,205,895 shares of TPB Common Stock under certain circumstances prior to maturity at a conversion rate of 18.585 shares per $1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately $53.81 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. The conversion price is adjusted periodically as a result of dividends paid by the Company, in excess of pre-determined thresholds of $0.04 per share. Upon conversion, the Company may pay cash, shares of common stock or a combination of cash and stock, as determined by the Company at its discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of March 31, 2021.

The Company early adopted ASU 2020-06 effective January 1, 2021 on a retrospective basis to all periods presented. Under ASU 2020-06, the Company will account for the Convertible Senior Notes entirely as a liability and will no longer separately account for the Convertible Senior Notes with liability and equity components. See note 2 for further discussion of the impact of the adoption of ASU 2020-06.

The Company incurred debt issuance costs attributable to the Convertible Senior Notes of $5.9 million which are amortized to interest expense using the effective interest method over the expected life of the Convertible Senior Notes.

In connection with the Convertible Senior Notes offering, the Company entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of $53.81 per and a cap price of $82.86 per share, and are exercisable when, and if, the Convertible Senior Notes are converted. The Company paid $20.53 million for these capped calls at the time they were entered into and charged that amount to additional paid-in capital.

Promissory Note

On June 10, 2020, in connection with the acquisition of certain Durfort assets, the Company issued the Promissory Note in the principal amount of $10.0 million (the “Principal Amount”), with an annual interest rate of 7.5%, payable quarterly, with the first payment due September 10, 2020. The Principal Amount is payable in two $5.0 million installments, with the first installment due 18 months after the closing date of the acquisition (June 10, 2020), and the second installment due 36 months after the closing date of the acquisition. The second installment is subject to reduction for certain amounts payable to the Company as a holdback.

Unsecured Loan

On April 6, 2020, the 2018 First Lien Credit Facility was amended to allow for an unsecured loan under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES”). On April 17, 2020, National Tobacco Company, L.P., a subsidiary of the Company, entered into a loan agreement with Regions Bank guaranteed by the Small Business Administration for a $7.5 million unsecured loan. The proceeds of the loan were received on April 27, 2020. The loan is scheduled to mature on April 17, 2022 and has a 1.00% interest rate.

Note Payable – IVG

In September 2018, the Company issued a note payable to IVG’s former shareholders (“IVG Note”). The IVG Note had a principal amount of $4.0 million with an interest rate of 6.0% per year and matured on March 5, 2020. All principal and accrued and unpaid interest under the IVG Note were subject to indemnification obligations of the sellers pursuant to the International Vapor Group Stock Purchase Agreement dated as of September 5, 2018. The carrying amount of the IVG Note, $4.2 million, was deposited into an escrow account pending agreement with the sellers of any indemnification obligations.

Leases

3 Months Ended
Mar. 31, 2021

Leases [Abstract]
Leases

Note 12. Leases

The Company's leases consist primarily of leased property for manufacturing warehouse, head offices and retail space as well as vehicle leases. At lease inception, the Company recognizes a lease right of use asset and lease liability calculated as the present value of future minimum lease payments. In general, the Company does not recognize any renewal periods within the lease terms as there are no significant barriers to ending the lease at the initial term. Lease and non-lease components are accounted for as a single lease component.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. Lease expense for these leases is recognized on a straight-line basis over the lease term.

The components of lease expense consisted of the following:

	Three Months Ended March 31,	
	2021	2020
Operating lease cost		
Cost of sales	$ 225	$ 233
Selling, general and administrative	752	398
Variable lease cost (1)	205	312
Short-term lease cost	11	83
Sublease income	(30)	(30)
Total	$ 1,163	$ 996

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

	March 31, 2021	December 31, 2020
Assets:		
Right of use assets	$ 17,406	$ 17,918
Total lease assets	$ 17,406	$ 17,918
Liabilities:		
Current lease liabilities (2)	$ 3,269	$ 3,228
Long-term lease liabilities	15,570	16,117
Total lease liabilities	$ 18,839	$ 19,345

(2) Reported within accrued liabilities on the balance sheet

	As of March 31,	
	2021	2020
Weighted-average remaining lease term - operating leases	7.1 years	7.8 years
Weighted-average discount rate - operating leases	4.93%	5.84%

Nearly all the lease contracts for the Company do not provide a readily determinable implicit interest rate. For these contracts, the Company uses a discount rate that approximates its incremental borrowing rate at the time of the lease commencement.

As of March 31, 2021, maturities of lease liabilities consisted of the following:

	March 31, 2021
2021	$ 3,078
2022	3,795
2023	3,528
2024	2,485
2025	2,125
Years thereafter	7,427
Total lease payments	$ 22,438
Less: Imputed interest	3,599
Present value of lease liabilities	$ 18,839

Income Taxes	3 Months Ended Mar. 31, 2021
Income Taxes [Abstract]	
Income Taxes	**Note 13. Income Taxes**

The Company's effective income tax rate for the three ended March 31, 2021, was 18.7% which includes a discrete tax deduction of $3.3 million for the three months ended March 31, 2021 relating to stock option exercises. The Company's effective income tax rate for the three months ended March 31, 2020, was 23.8% which includes a discrete tax deduction of $0.7 million for the three months ended March 31, 2020 relating to stock option exercises.

The Company follows the provisions of ASC 740-10-25, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. The Company has determined that the Company did not have any uncertain tax positions requiring recognition under the provisions of ASC 740-10-25. The Company's policy is to recognize interest and penalties accrued on uncertain tax positions, if any, as part of interest expense. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, the Company is no longer subject to U.S. federal and state tax examinations for years prior to 2017.

Pension and Postretirement Benefit Plans	3 Months Ended Mar. 31, 2021
Pension and Postretirement Benefit Plans [Abstract]	
Pension and Postretirement Benefit Plans	

Note 14. Pension and Postretirement Benefit Plans

The Company had a defined benefit pension plan. Benefits for hourly employees were based on a stated benefit per year of service, reduced by amounts earned in a previous plan. Benefits for salaried employees were based on years of service and the employees' final compensation. The Company's policy was to make the minimum amount of contributions that can be deducted for federal income taxes. The Company made no contributions to the pension plan in 2020. In October 2019, the Company elected to terminate the defined benefit pension plan, effective December 31, 2019 with final distributions made in third quarter of 2020.

The Company sponsored a defined benefit postretirement plan that covered hourly employees. This plan provided medical and dental benefits. This plan was contributory with retiree contributions adjusted annually. The Company's policy was to make contributions equal to benefits paid during the year. In October 2019, the Company amended the plan to cease benefits effective June 30, 2020.

The following table provides the components of net periodic pension and postretirement benefit costs and total costs for the plans:

	Three Months Ended March 31,			
	Pension Benefits		Postretirement Benefits	
	2021	2020	2021	2020
Service cost	$ -	$ -	$ -	$ -
Interest cost	-	95	-	-
Expected return on plan assets	-	(161)	-	-
Amortization of (gains) losses	-	36	-	(57)
Net periodic benefit income	$ -	$ (30)	$ -	$ (57)

Share Incentive Plans

3 Months Ended
Mar. 31, 2021

Share Incentive Plans [Abstract]

Share Incentive Plans

Note 15. Share Incentive Plans

On March 22, 2021, the Company's Board of Directors adopted the Turning Point Brands, Inc. 2021 Equity Incentive Plan (the "2021 Plan"), subject to the approval of our shareholders, pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2021 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2021 Plan, 1,290,000 shares, plus any shares remaining available for issuance under the 2015 Equity Incentive Plan (the "2015 Plan"), of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2021 Plan is scheduled to terminate on March 21, 2031. The 2021 Plan is administered by the compensation committee (the "Committee") of the Company's Board of Directors. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of March 31, 2021, there were no awards granted under the 2021 Plan. There are 1,290,000 shares, plus any shares remaining available for issuance under the 2015 Plan, available for grant under the 2021 Plan. The Company intends on seeking shareholder approval of the plan at its 2021 annual meeting of shareholders. Until the 2021 Plan is approved by shareholders, no awards may be issued thereunder.

On April 28, 2016, the Board of Directors of the Company adopted the Turning Point Brands, Inc., the 2015 Plan, pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2015 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2015 Plan, 1,400,000 shares of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2015 Plan is scheduled to terminate on April 27, 2026. The 2015 Plan is administered by the Committee. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of March 31, 2021, net of forfeitures, there were 16,159 shares of restricted stock, 563,911 PRSUs, and 707,878 options granted under the 2015 Plan. There are 112,052 shares available for grant under the 2015 Plan. The 2015 Plan will terminate upon approval by the Company's shareholders of the 2021 Plan. However, all awards issued under the 2015 Plan that have not been previously terminated or forfeited will remain outstanding and continue unaffected upon termination of the plan.

On February 8, 2006, the Board of Directors of the Company adopted the 2006 Equity Incentive Plan (the "2006 Plan") of North Atlantic Holding Company, Inc., pursuant to which awards may be granted to employees. The 2006 Plan provides for the granting of nonqualified stock options and restricted stock awards to employees. Upon the adoption of the Company's 2015 Equity Incentive Plan in connection with its IPO, the Company determined no additional grants would be made under the 2006 Plan. However, all awards issued under the 2006 Plan that have not been previously terminated or forfeited remain outstanding and continue unaffected.

There are no shares available for grant under the 2006 Plan. Stock option activity for the 2006 and 2015 Plans is summarized below:

	Stock Option Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2019	696,716	$ 18.13	$ 6.17
Granted	155,000	14.85	4.41
Exercised	(135,146)	6.37	2.74
Forfeited	(5,510)	27.25	8.64
Outstanding, December 31, 2020	711,060	19.58	6.42
Granted	100,000	51.75	13.77
Exercised	(74,615)	5.70	2.66
Forfeited	(850)	21.63	6.15
Outstanding, March 31, 2021	735,595	$ 25.36	$ 7.80

Under the 2006 and 2015 Plans, the total intrinsic value of options exercised during the three months ended March 31, 2021 and 2020, was $3.3 million, and $0.9 million, respectively.

At March 31,2021, under the 2006 Plan, the outstanding stock options' exercise price for 133,612 options is $3.83 per share, all of which are exercisable. The weighted average of the remaining lives of the outstanding stock options with an exercise price of $3.83 is approximately 2.89 years. The Company estimates the expected life of these stock options is ten years from the date of grant. For the $3.83 per share options, the weighted average fair value of options was determined using the Black-Scholes model assuming a ten-year life from grant date, a current share price and exercise price of $3.83, a risk-free interest

rate of 3.57%, volatility of 40%, and no assumed dividend yield. Based on these assumptions, the fair value of these options is approximately $2.17 per share option granted.

At March 31, 2021, under the 2015 Plan, the risk-free interest rate is based on the U.S. Treasury rate for the expected life at the time of grant. The expected volatility is based on the average long-term historical volatilities of peer companies. We intend to continue to consistently use the same group of publicly traded peer companies to determine expected volatility until sufficient information regarding volatility of our share price becomes available or until the selected companies are no longer suitable for this purpose. Due to our limited trading history, we are using the simplified method presented by SEC Staff Accounting Bulletin No. 107 to calculate expected holding periods, which represent the periods of time for which options granted are expected to be outstanding. We will continue to use this method until we have sufficient historical exercise experience to give us confidence in the reliability of our calculations. The fair values of these options were determined using the Black-Scholes option pricing model.

The following table outlines the assumptions based on the number of options granted under the 2015 Plan.

	February 10, 2017	May 17, 2017	March 7, 2018	March 13, 2018	March 20, 2019	October 24, 2019	March 18, 2020	February 18, 2021
Number of options granted	40,000	93,819	98,100	26,000	155,780	25,000	155,000	100,000
Options outstanding at March 31, 2021	27,050	54,183	77,967	26,000	144,134	25,000	147,799	99,850
Number exercisable at March 31, 2021	27,050	54,183	77,967	26,000	96,076	16,750	47,413	-
Exercise price	$ 13.00	$ 15.41	$ 21.21	$ 21.49	$ 47.58	$ 20.89	$ 14.85	$ 51.75
Remaining lives	5.87	6.13	6.94	6.96	7.98	8.57	8.97	9.89
Risk free interest rate	1.89%	1.76%	2.65%	2.62%	2.34%	1.58%	0.79%	0.56%
Expected volatility	27.44%	26.92%	28.76%	28.76%	30.95%	31.93%	35.72%	28.69%
Expected life	6.000	6.000	6.000	5.495	6.000	6.000	6.000	6.000
Dividend yield	-	-	0.83%	0.82%	0.42%	0.95%	1.49%	0.55%
Fair value at grant date	$ 3.98	$ 4.60	$ 6.37	$ 6.18	$ 15.63	$ 6.27	$ 4.41	$ 13.77

The Company has recorded compensation expense related to the options based on the provisions of ASC 718 under which the fixed portion of such expense is determined as the fair value of the options on the date of grant and amortized over the vesting period. The Company recorded compensation expense related to the options of approximately $0.3 million and $0.2 million for the three months ended March 31, 2021 and 2020, respectively. Total unrecognized compensation expense related to options at March 31, 2021, is $1.7 million, which will be expensed over 2.36 years.

Performance-Based Restricted Stock Units

PRSUs are restricted stock units subject to both performance-based and service-based vesting conditions. The number of shares of TPB Common Stock a recipient will receive upon vesting of a PRSU will be calculated by reference to certain performance metrics related to the Company's performance over a five-year period. PRSUs will vest on the measurement date, which is no more than 65 days after the performance period provided the applicable service and performance conditions are satisfied. As of March 31, 2021, there are 563,911 PRSUs outstanding, all of which are unvested. The following table outlines the PRSUs granted and outstanding as of March 31, 2021.

	March 31, 2017	March 7, 2018	March 20, 2019	March 20, 2019	July 19, 2019	March 18, 2020	December 28, 2020	February 18, 2021
Number of PRSUs granted	94,000	96,000	92,500	4,901	88,582	94,000	88,169	100,000
PRSUs outstanding at March 31, 2021	83,000	93,000	85,250	-	21,342	93,350	88,169	99,800
Fair value as of grant date	$ 15.60	$ 21.21	$ 47.58	$ 47.58	$ 52.15	$ 14.85	$ 46.42	$ 51.75
Remaining lives	0.75	1.75	2.75	-	1.75	3.75	2.75	4.75

The Company recorded compensation expense related to the PRSUs of approximately $1.2 million and $0.2 million in the consolidated statements of income for the three months ended March 31,2021 and 2020, respectively, based on the probability of achieving the performance condition. Total unrecognized compensation expense related to these awards at March 31, 2021, is $12.6 million which will be expensed over the service periods based on the probability of achieving the performance condition.

Contingencies

3 Months Ended
Mar. 31, 2021

Contingencies [Abstract]
Contingencies

Note 16. Contingencies

On October 9, 2020, a purported stockholder of Turning Point Brands, Inc., Paul-Emile Berteau, filed a complaint in the Delaware Court of Chancery relating to the merger of SDI with a subsidiary of the Company pursuant to the Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub (the "SDI Merger"). The complaint asserts two derivative counts purportedly on behalf of TPB for breaches of fiduciary duty against the Board of Directors of Turning Point Brands, Inc. and other parties. The third count asserts a direct claim against the Company and its Board of Directors seeking a declaration that TPB's Bylaws are inconsistent with TPB's certificate of incorporation. While the Company believes it has good and valid defenses to the claims, there can be no assurance that the Company will prevail in this case, and it could have a material adverse effect on the Company's business and results of operations.

Other major tobacco companies are defendants in product liability claims. In a number of these cases, the amounts of punitive and compensatory damages sought are significant and could have a material adverse effect on our business and results of operations. The Company is subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices or consumption of e-liquids and may be subject to claims in the future relating to other NewGen products. The Company is still evaluating these claims and the potential defenses to them. For example, the Company did not design or manufacture the products at issue; rather, the Company was merely the distributor. Nonetheless, there can be no assurance that the Company will prevail in these cases, and they could have a material adverse effect on the financial position, results of operations, or cash flows of the Company.

We have several subsidiaries engaged in making, distributing, and selling vapor products. As a result of the overall publicity and controversy surrounding the vapor industry generally, many companies have received informational subpoenas from various regulatory bodies and in some jurisdictions regulatory lawsuits have been filed regarding marketing practices and possible underage sales. We expect that our subsidiaries will be subject to some such cases and investigative requests. In the acquisition of the vapor businesses, we negotiated financial "hold-backs", which we expect to be able to use to defray expenses associated with the information production and the cost of defending any such lawsuits as well as the franchisee lawsuit. To the extent that litigation becomes necessary, we believe that the subsidiaries have strong factual and legal defenses against claims that they unfairly marketed vapor products.

We have two franchisor subsidiaries. Like many franchise businesses, in the ordinary course of their business, these subsidiaries are from time to time responding parties to arbitration demands brought by franchisees. One of our subsidiaries, which we acquired in 2018, is the franchisor of the VaporFi system. This subsidiary is a responding party in an arbitration brought by a franchisee claiming, among other things, violations of Federal Trade Commission Rules and Florida law. These allegations relate to the franchise disclosure document (FDD) utilized by the franchise system, a small vapor store chain, prior to our acquisition of the chain in 2018. We believe that we have good and valid substantive defenses against these claims and will vigorously defend ourselves in the arbitration.

We have also been named in a lawsuit brought by a different franchisee represented by the same firm that represents the plaintiff in the action described above. This case relates to the termination of the franchise agreement by the franchisor for failure to pay franchising fees and our subsequent demand that the franchisee cease using our marks and de-image locations formerly housing the franchises. The franchisee filed suit against us in the U.S. District Court for the Southern District of Florida sixteen months after our demand. The franchisee is claiming tortious interference and conversion. We believe that the suit was improperly brought before the U.S. District Court for

the South District of Florida because the related franchising agreements included a mandatory arbitration clause. We also believe we have valid substantive defenses against the claims and intend on vigorously defending our interests in this matter.

Income Per Share	3 Months Ended Mar. 31, 2021
Income Per Share [Abstract]	
Income Per Share	

Note 17. Income Per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted EPS computations of net income:

	Three Months Ended March 31,					
	2021			2020		
	Income	Shares	Per Share	Income	Shares	Per Share
Basic EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Denominator						
Weighted average		19,093,961	$ 0.62		19,689,446	$ 0.23
Diluted EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Interest expense related to Convertible Senior Notes, net of tax	1,054			-		
Diluted net income attributable to Turning Point Brands. Inc.	$ 12,837			$ 4,499		
Denominator						
Basic weighted average		19,093,961			19,689,446	
Convertible Senior Notes		3,205,895			-	
Stock options		365,211			417,354	
		22,665,067	$ 0.57		20,106,800	$ 0.22

For the three months ended March 31, 2020, the effect of the 3,202,808 shares issuable upon conversion of the Convertible Senior Notes were excluded from the diluted net income per share calculation because the effect would have been antidilutive.

Segment Information

3 Months Ended
Mar. 31, 2021

Segment Information [Abstract]

Segment Information

Note 18. Segment Information

In accordance with ASC 280, Segment Reporting, the Company has three reportable segments: (1) Zig-Zag Products; (2) Stoker's Products; and (3) NewGen Products. The Zig-Zag Products segment markets and distributes (a) rolling papers, tubes, and related products; and (b) finished cigars and MYO cigar wraps. The Stoker's Products segment (a) manufactures and markets moist snuff and (b) contracts for and markets loose leaf chewing tobacco products. The NewGen Products segment (a) markets and distributes CBD, liquid vapor products and certain other products without tobacco and/or nicotine; (b) distributes a wide assortment of products to non-traditional retail outlets via VaporBeast; and (c) markets and distributes a wide assortment of products to individual consumers via the VaporFi B2C online platform. Products in the Zig-Zag Products and Stoker's Products segments are distributed primarily through wholesale distributors in the United States while products in the NewGen Products segment are distributed primarily through e-commerce to non-traditional retail outlets and direct to consumers in the United States. The Other segment includes the costs and assets of the Company not assigned to one of the three reportable segments such as intercompany transfers, deferred taxes, deferred financing fees, and investments in subsidiaries.

The accounting policies of these segments are the same as those of the Company. Corporate costs are not directly charged to the three reportable segments in the ordinary course of operations. The Company evaluates the performance of its segments and allocates resources to them based on operating income.

The tables below present financial information about reported segments:

	Three Months Ended March 31,	
	2021	2020
Net sales		
Zig-Zag products	$ 41,004	$ 28,914
Stoker's products	29,255	26,495
NewGen products	37,382	35,280
Total	$ 107,641	$ 90,689
Gross profit		
Zig-Zag products	$ 24,896	$ 16,132
Stoker's products	15,892	13,874
NewGen products	12,473	11,425
Total	$ 53,261	$ 41,431
Operating income (loss)		
Zig-Zag products	$ 19,437	$ 12,417
Stoker's products	12,255	9,746
NewGen products	2,006	477
Corporate unallocated [(1)(2)]	(9,349)	(13,603)
Total	$ 24,349	$ 9,037
Interest expense, net	4,486	3,309
Investment income	(25)	(91)
Loss on extinguishment of debt	5,706	-

Net periodic income, excluding service cost	-	(87)
Income before income taxes	$ 14,182	$ 5,906
Capital expenditures		
Zig-Zag products	$ -	$ -
Stoker's products	840	860
NewGen products	2	17
Total	$ 842	$ 877
Depreciation and amortization		
Zig-Zag products	$ 114	$ -
Stoker's products	635	519
NewGen products	516	757
Total	$ 1,265	$ 1,276

(1) Includes corporate costs that are not allocated to any of the three reportable segments.
(2) Includes costs related to PMTA of $5.9 million in 2020.

	March 31, 2021	December 31, 2020
Assets		
Zig-Zag products	$ 212,400	$ 206,900
Stoker's products	148,093	133,016
NewGen products	91,616	91,116
Corporate unallocated (1)	175,196	65,017
Total	$ 627,305	$ 496,049

(1) Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Revenue Disaggregation—Sales Channel

Revenues of the Zig-Zag Products and Stoker's Products segments are primarily comprised of sales made to wholesalers while NewGen sales are made business to business and business to consumer, both online and through our corporate retail stores. NewGen net sales are broken out by sales channel below.

	NewGen Segment Three Months Ended March 31,	
	2021	2020
Business to Business	$ 27,257	$ 25,278
Business to Consumer - Online	10,033	8,134
Business to Consumer - Corporate store	-	1,794
Other	92	74
Total	$ 37,382	$ 35,280

Net Sales—Domestic vs. Foreign

The following table shows a breakdown of consolidated net sales between domestic and foreign customers.

Three Months Ended

	March 31,	
	2021	2020
Domestic	$ 100,127	$ 87,568
Foreign	7,514	3,121
Total	$ 107,641	$ 90,689

Dividends and Share Repurchase	3 Months Ended Mar. 31, 2021
Dividends and Share Repurchase [Abstract]	
Dividends and Share Repurchase	

Note 19. Dividends and Share Repurchase

The most recent dividend of $0.055 per common share was paid on April 9, 2021, to shareholders of record at the close of business on March 19, 2021.

Dividends are considered restricted payments under the Senior Secured Notes Indenture and Revolving Credit Facility. The Company is generally permitted to make restricted payments provided that, at the time of payment, or as a result of payment, the Company is not in default on its debt covenants. Additional earnings and market capitalization restrictions limit the aggregate amount of restricted, quarterly dividends during a fiscal year.

On February 25, 2020, the Company's Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The program is subject to the ongoing discretion of the Board. The total number of shares repurchased for the three months ended March 31, 2021, was 119,031 shares for a total cost of $5.7 million and an average price per share of $48.16. $34.1 million remains available for share repurchases under the program at March 31, 2021.

Subsequent Events

3 Months Ended
Mar. 31, 2021

Subsequent Events [Abstract]

Subsequent Events

Note 20. Subsequent Events

On April 19, 2021, the Company invested $8.7 million in Docklight Brands, Inc., a pioneering consumer products company with celebrated brands including *Marley Natural*® cannabis and *Marley*™ CBD. The Company has additional follow-on investment rights. As part of the investment, the Company has obtained exclusive U.S. distribution rights for Docklight's *Marley*™ CBD topical products.

Description of Business and Basis of Presentation (Policies)	3 Months Ended
	Mar. 31, 2021
Description of Business and Basis of Presentation [Abstract]	
Basis of Presentation	The accompanying unaudited interim, consolidated financial statements have been prepared in accordance with the accounting practices described in the Company's audited, consolidated financial statements as of and for the year ended December 31, 2020. In the opinion of management, the unaudited, interim, consolidated financial statements included herein contain all adjustments necessary to present fairly the financial position, results of operations, and cash flows of the Company for the periods indicated. Such adjustments, other than nonrecurring adjustments separately disclosed, are of a normal and recurring nature. The operating results for interim periods are not necessarily indicative of results to be expected for a full year or future interim periods. The unaudited, interim, consolidated financial statements should be read in conjunction with the Company's audited, consolidated financial statements and accompanying notes as of and for the year ended December 31, 2020. The accompanying interim, consolidated financial statements are presented in accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC")and, accordingly, do not include all the disclosures required by generally accepted accounting principles in the United States ("GAAP") with respect to annual financial statements.

Summary of Significant Accounting Policies (Policies)	3 Months Ended Mar. 31, 2021
Summary of Significant Accounting Policies [Abstract]	
Consolidation	*Consolidation*
	The consolidated financial statements include the accounts of the Company, its subsidiaries, all of which are wholly-owned, and variable interest entities ("VIEs") for which the Company is considered the primary beneficiary. All significant intercompany transactions have been eliminated.
Revenue Recognition	*Revenue Recognition*
	The Company recognizes revenues in accordance with Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers (Topic 606), which includes excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and incentives, upon delivery of goods to the customer – at which time the Company's performance obligation is satisfied – at an amount that the Company expects to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. The Company excludes from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars or vaping products billed to customers).
	The Company records an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. The Company records sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers, retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.
	A further requirement of ASU 2014-09 is for entities to disaggregate revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The Company's management views business performance through segments that closely resemble the performance of major product lines. Thus, the primary and most useful disaggregation of the Company's contract revenue for decision making purposes is the disaggregation by segment which can be found in Note 18 of Notes to Consolidated Financial Statements. An additional disaggregation of contract revenue by sales channel can be found within Note 18 as well.
Shipping Costs	*Shipping Costs*
	The Company records shipping costs incurred as a component of selling, general, and administrative expenses. Shipping costs incurred were approximately $5.9 million and $5.3 million for the three months ending March 31, 2021 and 2020, respectively.
Inventories	*Inventories*
	Inventories are stated at the lower of cost or net realizable value. Effective January 1, 2021, the Company changed its method of accounting for inventory using the last-in, first-out ("LIFO") method to the first-in, first-out ("FIFO") method. The Company applied this change retrospectively to all prior periods presented, which is discussed further in Note 6. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing.
Fair Value	*Fair Value*
	GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3).
	The three levels of the fair value hierarchy under GAAP are described below: • Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date. • Level 2 – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived principally from or corroborated by observable market data by correlation or other means. • Level 3 – Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.
Derivative Instruments	*Derivative Instruments*
	Foreign Currency Forward Contracts: The Company enters into foreign currency forward contracts to hedge a portion of its exposure to changes in foreign currency exchange rates on inventory purchase commitments. The Company accounts for its forward contracts under the provisions of ASC 815, Derivatives and Hedging. Under the Company's policy, the Company may hedge up to 100% of its anticipated purchases of inventory in the denominated invoice currency over a forward period not to exceed twelve months. The Company may also, from time to time, hedge up to ninety percent of its non-inventory purchases in the denominated invoice currency. Forward contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these forward contracts are transferred from other comprehensive income into inventory as the related inventories are received and are transferred to net income as inventory is sold. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Interest Rate Swap Agreements: The Company enters into interest rate swap contracts to manage interest rate risk and reduce the volatility of future cash flows. The Company accounts for its interest rate swap contracts under the provisions of ASC 815, Derivatives and Hedging. Swap contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these swap contracts are transferred from other comprehensive income into net income upon settlement of the derivative position or at maturity of the interest rate swap contract. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Risks and Uncertainties

Risks and Uncertainties

Manufacturers and sellers of tobacco products are subject to regulation at the federal, state, and local levels. Such regulations include, among others, labeling requirements, limitations on advertising, and prohibition of sales to minors. The tobacco industry is likely to continue to be heavily regulated. There can be no assurance as to the ultimate content, timing, or effect of any regulation of tobacco products by any federal, state, or local legislative or regulatory body, nor can there be any assurance that any such legislation or regulation would not have a material adverse effect on the Company's financial position, results of operations, or cash flows. In a number of states targeted flavor bans have been proposed or enacted legislatively or by the administrative process. Depending on the number and location of such bans, that legislation or regulation could have a material adverse effect on the Company's financial position, results of operations or cash flows. Food and Drug Administration ("FDA") continues to consider various restrictive regulations around our products, including targeted flavor bans; however, the details, timing, and ultimate implementation of such measures remain unclear.

The tobacco industry has experienced, and is experiencing, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes for injuries allegedly caused by smoking or exposure to smoke. However, several lawsuits have been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. Typically, such claims assert that use of smokeless products is addictive and causes oral cancer. Additionally, several lawsuits have been brought against manufacturers and distributors of NewGen products due to malfunctioning devices. There can be no assurance the Company will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Master Settlement Agreement (MSA): Pursuant to the Master Settlement Agreement (the "MSA") entered into in November 1998 by most states (represented by their attorneys general acting through the National Association of Attorneys General) and subsequent states' statutes, a "cigarette manufacturer" (which is defined to include a manufacturer of make-your-own ("MYO") cigarette tobacco) has the option of either becoming a signatory to the MSA or opening, funding, and maintaining an escrow account to have funds available for certain potential tobacco-related liabilities with sub-accounts on behalf of each settling state. Such companies are entitled to direct the investment of the escrowed funds and withdraw any appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state's escrow statute to pay a final judgement to that state's plaintiffs in the event of such a final judgement against the Company. The Company chose to open and fund an escrow account as its method of compliance. It is the Company's policy to record amounts on deposit in the escrow account for prior years as a non-current asset. Each year's annual obligation is required to be deposited in the escrow account by April 15 of the following year. In addition to the annual deposit, many states have elected to require quarterly deposits for the previous quarter's sales. As of March 31, 2021, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $31.5 million. At December 31, 2020, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $32.1 million. Effective in the third quarter of 2017, the Company no longer sells any product covered under the MSA. Thus, absent a change in legislation, the Company will no longer be required to make deposits to the MSA escrow account.

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury Notes, and Treasury Bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; any investment in an unrealized loss position will be held until the value is recovered, or until maturity. The following shows the fair value of the MSA escrow account as of March 31, 2021 and December 31, 2020.

Fair values for the U.S. Governmental agency obligations are Level 2. The following tables show cost and estimated fair value of the assets held in the MSA account as well as the maturities of the U.S. Governmental agency obligations held in such account for the periods indicated.

	As of March 31, 2021				As of December 31, 2020
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cost and Estimated Fair Value
Cash and cash equivalents	$17,141	$ -	$ -	$ 17,141	$ 32,074
U.S. Governmental agency obligations (unrealized loss position < 12 months)	14,933	-	(597)	14,336	-
	$32,074	$ -	$ (597)	$ 31,477	$ 32,074

	As of March 31, 2021
Less than one year	$ -
One to five years	-
Five to ten years	12,984
Greater than ten years	1,949
Total	$ 14,933

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of March 31, 2021	Deposits as of December 31, 2020
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	$ 32,074	$ 32,074

Food and Drug Administration: On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (the "FSPTCA") authorized the FDA to immediately regulate the manufacturing, sale, and marketing of four categories of tobacco products – cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. On August 8, 2016, the FDA deeming regulation became effective. The deeming regulation gave the FDA the authority to additionally regulate cigars, pipe tobacco, e-cigarettes, vaporizers, and e-liquids as "deemed" tobacco products under the FSPTCA.

The FDA assesses tobacco product user fees on six classes of regulated tobacco products and computes user fees using a methodology similar to the methodology used by the U.S Department of Agriculture to compute the Tobacco Transition Payment Program ("TTPP," also known as the "Tobacco Buyout") assessment. First, the total, annual, congressionally established user fee assessment is allocated among the various classes of tobacco products using the federal excise tax weighted market share of tobacco products subject to regulation. Then, the assessment for each class of tobacco products is divided among individual manufacturers and importers.

In August 2016, the FDA's regulatory authority under the Tobacco Control Act (the "TCA") was extended to all tobacco products not previously covered, including: (i) certain NewGen products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco); (iii) pipe tobacco; (iv) hookah products; and (v) any other tobacco product "newly deemed" by the FDA. These "deeming regulations" apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Accordingly, the FDA has since regulated our cigar and cigar wrap products as well as our vapor products containing tobacco-derived nicotine and products intended or reasonably expected to be used to consume such e-liquids.

Under the deeming regulations, the FDA has responsibility for conducting premarket review of "new tobacco products"—defined as those products not commercially marketed in the United States as of February 15, 2007. There are three pathways for obtaining premarket authorization, including submission of a premarket tobacco product application ("PMTA").

We submitted premarket filings prior to the September 9, 2020 deadline for certain of our products and intend to supplement and complete the applications within FDA's discretionary timeline. A successful PMTA must demonstrate that the subject product is "appropriate for the protection of public health," taking into account the effect of the marketing of the product on all sub-populations while a Substantial Equivalence Report must demonstrate that a new product either has the same characteristics as its predicate product or different characteristics, but does not raise different questions of public health. The FDA is required under a court order to issue a decision related to the authorization of these products within twelve months; otherwise, these products cease to be subject to the FDA's continued compliance policy, which allows products to be marketed pending premarket review. FDA may, in its discretion and on a case-by-case basis, deviate from this policy.

FDA has issued a number of proposed rules related to premarket filings; however, those rules were not finalized until after September 9, 2020. As such, it is unclear whether and how FDA will apply any new or additional requirements to currently pending applications. We believe we have products that meet the requisite standards and have filed premarket filings supporting a showing of the respective required standard. However, there is no assurance that the FDA's guidance or ultimate regulation will not change, or that the FDA will review and authorize the products in the requisite time period or that, in that circumstance, the FDA will use its discretion on a case-by-case basis to allow for the continued marketing of the products, or that unforeseen circumstances will not arise that prevent us from sufficiently supplementing or completing our applications or otherwise increase the amount of time and money we are required to spend to receive all necessary marketing orders. Although we filed many premarket applications in a timely manner, no assurance can be given that the applications will ultimately be successful. This may result in the prioritization of supplementing or completing applications for high priority SKUs in our inventory position, which could adversely impact future revenues.

In addition, we currently distribute many third-party manufactured vapor products for which we will be completely dependent on the manufacturer complying with the premarket filing requirements. There can be no assurance that these third-party products will receive a marketing order. While we will take measures to pursue regulatory compliance for our own privately-branded or proprietary vape products that compete with these third-party products, there is no assurance that such proprietary products would be as successful in the marketplace or can fully displace third-party products that are currently being distributed by us, which could adversely affect our results of operations

and liquidity. For a period of time after the filing deadline, we expect there to be a lack of enforcement, which may adversely affect our ability to compete in the marketplace against those who continue to sell unauthorized products.

In January 2020, FDA issued a Guidance document (the "January 2020 Guidance") that stated it would be prioritizing enforcement of several categories of electronic nicotine delivery system ("ENDS") products: (1) flavored, cartridge-based ENDS products (other than tobacco- or menthol-flavored ENDS products; (2) ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; (3) ENDS products targeted to minors or whose marketing is likely to promote the use of ENDS by minors; and (4) ENDS products offered for sale after May 12, 2020, premarket application deadline (later updated to reflect the September 9, 2020 filing deadline) for which the manufacturer has not submitted a premarket application. The policy outlined several factors the agency would consider in its enforcement of flavored cigars going forward but did not restrict those products as it had considered in the March 2019 Guidance proposal. The FDA's policy on these and other regulated products may change or expand over time in ways not yet known and may significantly impact our products or our premarket filings.

Recent Accounting Pronouncements Adopted

Recent Accounting Pronouncements Adopted

In December 2019, the FASB issued ASU 2019-12 to simplify the accounting in ASC 740, *Income Taxes*. This guidance removes certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. This guidance also clarifies and simplifies other areas of ASC 740. This ASU will be effective beginning in the first quarter of the Company's fiscal year 2021. Certain amendments in this update must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The ASU was effective for the Company beginning in the first quarter of 2021. The ASU did not have an impact to the Company's financial statements and related disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)*. This guidance simplifies the accounting for convertible debt instruments by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the convertible instrument. This guidance also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company early adopted this ASU effective January 1, 2021 using the full retrospective method of transition. The adoption resulted in a $7.1 million increase in Accumulated earnings, a $24.2 million increase in Notes payable and long-term debt, a $6.3 million decrease in deferred income taxes and a $24.9 million decrease in Additional paid-in capital as of December 31, 2020, and a $2.2 million decrease in Accumulated deficit and a $24.9 million decrease in Additional paid-in capital as of December 31, 2019. Interest expense will decrease by $6.7 million annually and weighted average diluted common shares outstanding will increase by approximately 3.2 million shares.

Summary of Significant Accounting Policies (Tables)

3 Months Ended
Mar. 31, 2021

Summary of Significant Accounting Policies [Abstract]

Fair Value of MSA Escrow Account

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury Notes, and Treasury Bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; any investment in an unrealized loss position will be held until the value is recovered, or until maturity. The following shows the fair value of the MSA escrow account as of March 31, 2021 and December 31, 2020.

Fair values for the U.S. Governmental agency obligations are Level 2. The following tables show cost and estimated fair value of the assets held in the MSA account as well as the maturities of the U.S. Governmental agency obligations held in such account for the periods indicated.

	As of March 31, 2021				As of December 31, 2020
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cost and Estimated Fair Value
Cash and cash equivalents	$17,141	$ -	$ -	$ 17,141	$ 32,074
U.S. Governmental agency obligations (unrealized loss position < 12 months)	14,933	-	(597)	14,336	-
	$32,074	$ -	$ (597)	$ 31,477	$ 32,074

Maturities of U.S. Governmental Agency Obligations

	As of March 31, 2021
Less than one year	$ -
One to five years	-
Five to ten years	12,984
Greater than ten years	1,949
Total	$ 14,933

Deposits by Sales Year for MSA Escrow Account

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of March 31, 2021	Deposits as of December 31, 2020
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	$ 32,074	$ 32,074

Acquisitions (Tables)

Acquisitions [Abstract]

Acquisition of ReCreation Marketing

3 Months Ended
Mar. 31, 2021

In July 2019, the Company obtained a 30% stake in a Canadian distribution entity, ReCreation for $1 million paid at closing. In November 2020, the Company invested an additional $1 million related to our 30% stake. In November 2020, The Company also invested an additional $2 million increasing its ownership interest to 50%. The Company received board seats aligned with its ownership position. The Company also provided a $2.0 million unsecured loan to ReCreation bearing interest at 8% per annum and maturing November 19, 2022. The Company has determined that ReCreation is a VIE due to its required subordinated financial support. The Company has determined it is the primary beneficiary due to its 50% equity interest, additional subordinated financing and distribution agreement with ReCreation for the sale of the Company's products. As a result, the Company began consolidating ReCreation effective November 2020. As of March 31, 2021, the Company had not completed the accounting for the acquisition. The following table summarizes the consideration transferred and calculation of goodwill based on excess of the acquisition price over the estimated fair value of the identifiable net assets acquired and are based on management's preliminary estimates:

Total consideration transferred	$ 4,000
Adjustments to consideration transferred:	
Cash acquired	(3,711)
Working capital	418
Debt eliminated in consolidation	2,000
Adjusted consideration transferred	2,707
Assets acquired:	
Working capital (primarily AR and inventory)	1,551
Fixed assets and Other long term assets	70
Other liabilities	(203)
Non-controlling interest	(4,050)
Net assets acquired	$(2,632)
Goodwill	$ 5,339

Inventories (Tables)

3 Months Ended
Mar. 31, 2021

Inventories [Abstract]

Impact of Change in Method of Accounting for Inventory on Financial Statements

The Company applied this change retrospectively to all prior periods presented. This change resulted in a $4.5 million increase in Accumulated earnings as of December 31, 2020, from $12.1 million to $16.6 million and a $4.3 million decrease in Accumulated deficit as of December 31, 2019, from $15.3 million to $11.0 million. In addition, the following financial statement line items in the Company's Consolidated Balance Sheets as of December 31, 2020 and its Consolidated Statements of Income and Consolidated Statements of Cash Flows for the three months ended March 31, 2020 were adjusted as follows:

Consolidated Statement of Income	For the three months ended March 31, 2020		
	As Originally Reported	Effect of Change (a)	As Adjusted
Cost of sales	$ 49,258	$ -	$ 49,258
Income before income taxes	$ 4,221	$ -	$ 4,221
Income tax expense	$ 946	$ -	$ 946
Net income attributable to Turning Point Brands, Inc.	$ 3,275	$ -	$ 3,275
Earnings per common share:			
Basic	$ 0.17	$ -	$ 0.17
Diluted	$ 0.16	$ -	$ 0.16

Consolidated Balance Sheets	December 31, 2020		
	As Originally Reported	Effect of Change	As Adjusted
Inventories	$ 79,750	$ 6,106	$ 85,856
Deferred income taxes	$ 4,082	$ 1,584	$ 5,666
Accumulated earnings (deficit)	$ 12,058	$ 4,522	$ 16,580

Consolidated Statement of Cash Flows	For the three months ended March 31, 2020		
	As Originally Reported	Effect of Change (a)	As Adjusted
Consolidated net income	$ 3,275	$ -	$ 3,275
Deferred income taxes	$ 545	$ -	$ 545
Inventories	$ 1,784	$ -	$ 1,784

(a) There was no LIFO impact for the three months ended March 31, 2020.

Inventories

The components of inventories are as follows:

	March 31, 2021	December 31, 2020
Raw materials and work in process	$ 7,519	$ 8,137
Leaf tobacco	41,707	32,948
Finished goods - Zig-Zag Products	21,477	14,903
Finished goods - Stoker's Products	9,777	9,727
Finished goods - NewGen products	16,668	18,916
Other	1,203	1,225
Inventory	$ 98,351	$ 85,856

Other Current Assets (Tables)	3 Months Ended Mar. 31, 2021
Other Current Assets [Abstract]	
Other Current Assets	Other current assets consist of:

	March 31, 2021	December 31, 2020
Inventory deposits	$ 7,369	$ 7,113
Insurance deposit	3,000	3,000
Prepaid taxes	526	813
Other	13,971	15,525
Total	$ 24,866	$ 26,451

Property, Plant, and Equipment (Tables)	3 Months Ended Mar. 31, 2021
Property, Plant, and Equipment [Abstract]	
Property, Plant, and Equipment	Property, plant, and equipment consists of:

	March 31, 2021	December 31, 2020
Land	$ 22	$ 22
Buildings and improvements	2,750	2,750
Leasehold improvements	4,702	4,702
Machinery and equipment	16,499	15,612
Furniture and fixtures	9,025	9,025
Gross property, plant and equipment	32,998	32,111
Accumulated depreciation	(17,350)	(16,587)
Net property, plant and equipment	$ 15,648	$ 15,524

Other Assets (Tables)

3 Months Ended
Mar. 31, 2021

Other Assets [Abstract]

Other Assets

Other assets consist of:

	March 31, 2021	December 31, 2020
Equity investments	$ 24,016	$ 24,018
Other	2,357	2,818
Total	$ 26,373	$ 26,836

Accrued Liabilities (Tables)

3 Months Ended
Mar. 31, 2021

Accrued Liabilities [Abstract]

Accrued Liabilities

Accrued liabilities consist of:

	March 31, 2021	December 31, 2020
Accrued payroll and related items	$ 3,664	$ 9,459
Customer returns and allowances	5,683	5,259
Taxes payable	7,025	4,326
Lease liabilities	3,269	3,228
Accrued interest	2,924	2,096
Other	9,280	10,857
Total	$ 31,845	$ 35,225

Notes Payable and Long-Term Debt (Tables)

3 Months Ended
Mar. 31, 2021

Notes Payable and Long-Term Debt [Abstract]

Notes Payable and Long-Term Debt

Notes payable and long-term debt consists of the following in order of preference:

	March 31, 2021	December 31, 2020
Senior Secured Notes	$ 250,000	$ -
2018 First Lien Term Loan	-	130,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	10,000
Note payable - Unsecured Loan	7,485	7,485
Gross notes payable and long-term debt	439,985	319,985
Less deferred finance charges	(10,183)	(5,873)
Less current maturities	(5,000)	(12,000)
Notes payable and long-term debt	$ 424,802	$ 302,112

Leases (Tables)

3 Months Ended
Mar. 31, 2021

Leases [Abstract]

Components of Lease Expense

The components of lease expense consisted of the following:

	Three Months Ended March 31,	
	2021	2020
Operating lease cost		
Cost of sales	$ 225	$ 233
Selling, general and administrative	752	398
Variable lease cost (1)	205	312
Short-term lease cost	11	83
Sublease income	(30)	(30)
Total	$ 1,163	$ 996

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

Operating Lease Assets and Liabilities

	March 31, 2021	December 31, 2020
Assets:		
Right of use assets	$ 17,406	$ 17,918
Total lease assets	$ 17,406	$ 17,918
Liabilities:		
Current lease liabilities (2)	$ 3,269	$ 3,228
Long-term lease liabilities	15,570	16,117
Total lease liabilities	$ 18,839	$ 19,345

(2) Reported within accrued liabilities on the balance sheet

Operating Lease Weighted-Average Remaining Lease Term and Discount Rate

	As of March 31,	
	2021	2020
Weighted-average remaining lease term - operating leases	7.1 years	7.8 years
Weighted-average discount rate - operating leases	4.93%	5.84%

Maturities of Lease Liabilities

As of March 31, 2021, maturities of lease liabilities consisted of the following:

	March 31, 2021
2021	$ 3,078
2022	3,795
2023	3,528
2024	2,485
2025	2,125
Years thereafter	7,427
Total lease payments	$ 22,438
Less: Imputed interest	3,599
Present value of lease liabilities	$ 18,839

Pension and Postretirement Benefit Plans (Tables)

3 Months Ended Mar. 31, 2021

Pension and Postretirement Benefit Plans [Abstract]

Net Periodic Benefit Cost

The following table provides the components of net periodic pension and postretirement benefit costs and total costs for the plans:

	Three Months Ended March 31,			
	Pension Benefits		Postretirement Benefits	
	2021	2020	2021	2020
Service cost	$ -	$ -	$ -	$ -
Interest cost	-	95	-	-
Expected return on plan assets	-	(161)	-	-
Amortization of (gains) losses	-	36	-	(57)
Net periodic benefit income	$ -	$ (30)	$ -	$ (57)

Share Incentive Plans (Tables)

3 Months Ended Mar. 31, 2021

Share Incentive Plans [Abstract]

Stock Option Activity

	Stock Option Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2019	696,716	$ 18.13	$ 6.17
Granted	155,000	14.85	4.41
Exercised	(135,146)	6.37	2.74
Forfeited	(5,510)	27.25	8.64
Outstanding, December 31, 2020	711,060	19.58	6.42
Granted	100,000	51.75	13.77
Exercised	(74,615)	5.70	2.66
Forfeited	(850)	21.63	6.15
Outstanding, March 31, 2021	735,595	$ 25.36	$ 7.80

Assumptions for Options Granted Under 2015 Plan

The following table outlines the assumptions based on the number of options granted under the 2015 Plan.

	February 10, 2017	May 17, 2017	March 7, 2018	March 13, 2018	March 20, 2019	October 24, 2019	March 18, 2020	February 18, 2021
Number of options granted	40,000	93,819	98,100	26,000	155,780	25,000	155,000	100,000
Options outstanding at March 31, 2021	27,050	54,183	77,967	26,000	144,134	25,000	147,799	99,850
Number exercisable at March 31, 2021	27,050	54,183	77,967	26,000	96,076	16,750	47,413	-
Exercise price	$ 13.00	$ 15.41	$ 21.21	$ 21.49	$ 47.58	$ 20.89	$ 14.85	$ 51.75
Remaining lives	5.87	6.13	6.94	6.96	7.98	8.57	8.97	9.89
Risk free interest rate	1.89%	1.76%	2.65%	2.62%	2.34%	1.58%	0.79%	0.56%
Expected volatility	27.44%	26.92%	28.76%	28.76%	30.95%	31.93%	35.72%	28.69%
Expected life	6.000	6.000	6.000	5.495	6.000	6.000	6.000	6.000
Dividend yield	-	-	0.83%	0.82%	0.42%	0.95%	1.49%	0.55%
Fair value at grant date	$ 3.98	$ 4.60	$ 6.37	$ 6.18	$ 15.63	$ 6.27	$ 4.41	$ 13.77

PRSU Activity

PRSUs are restricted stock units subject to both performance-based and service-based vesting conditions. The number of shares of TPB Common Stock a recipient will receive upon vesting of a PRSU will be calculated by reference to certain performance metrics related to the Company's performance over a five-year period. PRSUs will vest on the measurement date, which is no more than 65 days after the performance period provided the applicable service and performance conditions are satisfied. As of March 31, 2021, there are 563,911 PRSUs outstanding, all of which are unvested. The following table outlines the PRSUs granted and outstanding as of March 31, 2021.

	March 31, 2017	March 7, 2018	March 20, 2019	March 20, 2019	July 19, 2019	March 18, 2020	December 28, 2020	February 18, 2021
Number of PRSUs granted	94,000	96,000	92,500	4,901	88,582	94,000	88,169	100,000
PRSUs outstanding at March 31, 2021	83,000	93,000	85,250	-	21,342	93,350	88,169	99,800
Fair value as of grant date	$ 15.60	$ 21.21	$ 47.58	$ 47.58	$ 52.15	$ 14.85	$ 46.42	$ 51.75
Remaining lives	0.75	1.75	2.75	-	1.75	3.75	2.75	4.75

Income Per Share (Tables)

3 Months Ended
Mar. 31, 2021

Income Per Share [Abstract]

Basic and Diluted Net Income per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted EPS computations of net income:

	Three Months Ended March 31,					
	2021			2020		
	Income	Shares	Per Share	Income	Shares	Per Share
Basic EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Denominator						
Weighted average		19,093,961	$ 0.62		19,689,446	$ 0.23
Diluted EPS:						
Numerator						
Net income attributable to Turning Point Brands, Inc.	$ 11,783			$ 4,499		
Interest expense related to Convertible Senior Notes, net of tax	1,054			-		
Diluted net income attributable to Turning Point Brands. Inc.	$ 12,837			$ 4,499		
Denominator						
Basic weighted average		19,093,961			19,689,446	
Convertible Senior Notes		3,205,895			-	
Stock options		365,211			417,354	
		22,665,067	$ 0.57		20,106,800	$ 0.22

Segment Information (Tables)

Segment Information [Abstract]

Financial Information of Reported Segments

3 Months Ended Mar. 31, 2021

The tables below present financial information about reported segments:

	Three Months Ended March 31,	
	2021	**2020**
Net sales		
Zig-Zag products	$ 41,004	$ 28,914
Stoker's products	29,255	26,495
NewGen products	37,382	35,280
Total	$ 107,641	$ 90,689
Gross profit		
Zig-Zag products	$ 24,896	$ 16,132
Stoker's products	15,892	13,874
NewGen products	12,473	11,425
Total	$ 53,261	$ 41,431
Operating income (loss)		
Zig-Zag products	$ 19,437	$ 12,417
Stoker's products	12,255	9,746
NewGen products	2,006	477
Corporate unallocated [1][2]	(9,349)	(13,603)
Total	$ 24,349	$ 9,037
Interest expense, net	4,486	3,309
Investment income	(25)	(91)
Loss on extinguishment of debt	5,706	-
Net periodic income, excluding service cost	-	(87)
Income before income taxes	$ 14,182	$ 5,906
Capital expenditures		
Zig-Zag products	$ -	$ -
Stoker's products	840	860
NewGen products	2	17
Total	$ 842	$ 877
Depreciation and amortization		
Zig-Zag products	$ 114	$ -
Stoker's products	635	519
NewGen products	516	757
Total	$ 1,265	$ 1,276

(1) Includes corporate costs that are not allocated to any of the three reportable segments.
(2) Includes costs related to PMTA of $5.9 million in 2020.

	March 31, 2021	December 31, 2020
Assets		

Zig-Zag products	$ 212,400	$ 206,900
Stoker's products	148,093	133,016
NewGen products	91,616	91,116
Corporate unallocated [1]	175,196	65,017
Total	$ 627,305	$ 496,049

(1) Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Revenue Disaggregation - Sales Channel

Revenues of the Zig-Zag Products and Stoker's Products segments are primarily comprised of sales made to wholesalers while NewGen sales are made business to business and business to consumer, both online and through our corporate retail stores. NewGen net sales are broken out by sales channel below.

	NewGen Segment	
	Three Months Ended March 31,	
	2021	2020
Business to Business	$ 27,257	$ 25,278
Business to Consumer - Online	10,033	8,134
Business to Consumer - Corporate store	-	1,794
Other	92	74
Total	$ 37,382	$ 35,280

Net Sales - Domestic and Foreign

The following table shows a breakdown of consolidated net sales between domestic and foreign customers.

	Three Months Ended March 31,	
	2021	2020
Domestic	$ 100,127	$ 87,568
Foreign	7,514	3,121
Total	$ 107,641	$ 90,689

Description of Business and Basis of Presentation (Details)	3 Months Ended Mar. 31, 2021 Segment Outlet
Description of Business and Basis of Presentation [Abstract]	
Number of reportable segments | Segment	3
Number of retail outlets in North America | Outlet	210,000

Summary of Significant Accounting Policies, Shipping Costs (Details) - USD ($) $ in Millions	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Shipping Costs [Abstract]		
Shipping costs	$ 5.9	$ 5.3

Summary of Significant Accounting Policies, Derivative Instruments (Details) - Maximum [Member]	3 Months Ended
	Mar. 31, 2021
Derivative Instruments [Abstract]	
Percentage of anticipated purchases of inventory that may be hedged	100.00%
Term of hedge	12 months
Percentage of non-inventory purchases that may be hedged	90.00%

Summary of Significant Accounting Policies, Master Settlement Agreement (Details) - USD ($) $ in Thousands	3 Months Ended Mar. 31, 2021	Dec. 31, 2020
Master Settlement Agreement [Abstract]		
Term for restricted withdrawal of principal from MSA escrow account	25 years	
Fair Value of MSA Escrow Account [Abstract]		
Cost	$ 32,074	$ 32,074
Gross unrealized gains	0	
Gross unrealized losses	(597)	
Estimated fair value	31,477	32,074
Maturities of U.S. Governmental Agency Obligations [Abstract]		
Less than one year	0	
One to five years	0	
Five to ten years	12,984	
Greater than ten years	1,949	
Total	14,933	
Master Settlement Agreement Escrow Account by Sales Year [Abstract]		
1999	211	211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	32,074	32,074
Cash and Cash Equivalents [Member]		
Fair Value of MSA Escrow Account [Abstract]		
Cost	17,141	32,074
Gross unrealized gains	0	
Gross unrealized losses	0	

Estimated fair value	17,141	32,074
U. S. Governmental Agency Obligations (Unrealized Loss Position less than 12 Months) [Member]		
Fair Value of MSA Escrow Account [Abstract]		
Cost	14,933	0
Gross unrealized gains	0	
Gross unrealized losses	(597)	
Estimated fair value	$ 14,336	$ 0

Summary of Significant Accounting Policies, Food and Drug Administration (Details)	3 Months Ended Mar. 31, 2021 Class Pathway Category
Food and Drug Administration [Abstract]	
Number of categories of tobacco products regulated by the FDA | Category	4
Number of classes of regulated tobacco products on which user fees are assessed | Class	6
Number of pathways for obtaining premarket authorization | Pathway	3

Summary of Significant Accounting Policies, Recent Accounting Pronouncements (Details) - USD ($) $ in Thousands	3 Months Ended		12 Months Ended		
	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2021	Dec. 31, 2020	Dec. 31, 2019
Recent Accounting Pronouncements [Abstract]					
Accumulated earnings	$ 34,357			$ 23,645	
Notes payable and long-term debt	424,802			302,112	
Deferred income taxes	0			610	
Additional paid-in capital	102,879			102,423	
Interest expense	$ (4,486)	$ (3,309)			
Weighted average diluted common shares (in shares)	22,665,067	20,106,800			
ASU 2020-06 [Member] | Accounting Standards Update, Adjustment [Member]					
Recent Accounting Pronouncements [Abstract]					
Accumulated earnings				7,100	$ (2,200)
Notes payable and long-term debt				24,200	
Deferred income taxes				(6,300)	
Additional paid-in capital				$ (24,900)	
Weighted average diluted common shares (in shares)	3,200,000				
ASU 2020-06 [Member] | Accounting Standards Update, Adjustment [Member] | Forecast [Member]					
Recent Accounting Pronouncements [Abstract]					
Interest expense			$ (6,700)		

Acquisitions, ReCreation Marketing (Details) - USD ($) $ in Thousands	1 Months Ended			
	Nov. 30, 2020	Jul. 31, 2019	Mar. 31, 2021	Dec. 31, 2020
Assets Acquired [Abstract]				
Goodwill			$ 159,808	$ 159,621
30% Investment in ReCreation Marketing [Member]				
Acquisitions [Abstract]				
Ownership interest		30.00%		
Payment for investment	$ 1,000			
50% Investment in ReCreation Marketing [Member]				
Acquisitions [Abstract]				
Ownership interest	50.00%			
Payment for investment	$ 2,000			
ReCreation Marketing [Member]				
Acquisitions [Abstract]				
Payment for investment		$ 1,000		
Unsecured loan	$ 2,000			
Interest rate	8.00%			
Purchase Price [Abstract]				
Total consideration transferred	$ 4,000			
Adjustments to Consideration Transferred [Abstract]				
Cash acquired	(3,711)			
Working capital	418			
Debt eliminated in consolidation	2,000			
Adjusted consideration transferred	2,707			
Assets Acquired [Abstract]				
Working capital (primarily AR and inventory)	1,551			
Fixed assets and other long term assets	70			
Other liabilities	(203)			
Non-controlling interest	(4,050)			
Net assets acquired	(2,632)			
Goodwill	$ 5,339			

Acquisitions, SDI Reorganization (Details) $ in Millions	Jul. 16, 2020 USD ($) shares
Acquisitions [Abstract]	
Common Stock conversation ratio	0.52095
Total consideration for asset purchase	$ 236.0
Common Stock issued (in shares) | shares	7,934,704
Common Stock issued	$ 234.3
Common Stock acquired	$ 236.0
Common Stock acquired (in shares) | shares	8,178,918
Common Stock retired (in shares) | shares	244,214
Accumulated Earnings (Deficit) [Member]	
Acquisitions [Abstract]	
Common Stock retired	$ 1.7

Acquisitions, Durfort Holdings (Details) - Durfort [Member] - USD ($) $ in Millions	1 Months Ended Jun. 30, 2020	3 Months Ended Mar. 31, 2021
Acquisitions [Abstract]		
Total consideration transferred	$ 47.7	
Cash paid for acquisition	37.7	
Capitalized transaction costs	1.7	
Issuance of promissory note	10.0	
Master Distribution Agreement [Member]		
Acquisitions [Abstract]		
Finite-lived intangible asset acquired	5.5	
Finite-lived intangible asset acquired, life		15 years
Intellectual Property [Member]		
Acquisitions [Abstract]		
Indefinite-lived intangible asset acquired	$ 42.2	

Derivative Instruments (Details) $ in Thousands, € in Millions	3 Months Ended		12 Months Ended				
	Mar. 31, 2021 USD ($)	Mar. 31, 2020 USD ($)	Dec. 31, 2020 EUR (€)	Mar. 31, 2021 EUR (€)	Dec. 31, 2020 USD ($)	Dec. 31, 2020 EUR (€)	Mar. 31, 2018 USD ($)
Derivative Instruments [Abstract]							
Settlement of interest rate swaps	$ 3,573	$ 0					
Maximum [Member]							
Derivative Instruments [Abstract]							
Percentage of anticipated purchases of inventory that may be hedged	100.00%						
Term of hedge	12 months						
Percentage of non-inventory purchases that may be hedged	90.00%						
Foreign Currency [Member]							
Derivative Instruments [Abstract]							
Fair value, asset					$ 400		
Fair value, liability					0		
Foreign Currency [Member] | Other Current Assets [Member]							
Derivative Instruments [Abstract]							
Fair value, asset	$ 100				400		
Foreign Currency [Member] | Accrued Liabilities [Member]							
Derivative Instruments [Abstract]							
Fair value, liability	0				0		
Foreign Currency [Member] | Purchase [Member]							
Derivative Instruments [Abstract]							
Notional amount of contracts executed | €			€ 19.7				
Notional amount | €				€ 13.1		€ 18.0	
Foreign Currency [Member] | Sale [Member]							
Derivative Instruments [Abstract]							
Notional amount of contracts executed | €			€ 21.4				
Notional amount | €				€ 14.3		€ 19.6	
Interest Rate Swaps [Member]							
Derivative Instruments [Abstract]							
Notional amount					70,000		$ 70,000
Settlement of interest rate swaps	$ 3,600						
Interest Rate Swaps [Member] | Interest Expense [Member]							
Derivative Instruments [Abstract]							

Loss reclassified into interest expense	$ 200		
Interest Rate Swaps [Member] | LIBOR [Member]			
Derivative Instruments [Abstract]			
Interest rate percentage	2.755%	2.755%	
Interest Rate Swaps [Member] | Other Long-Term Liabilities [Member]			
Derivative Instruments [Abstract]			
Fair value, liability			$ 3,700

Fair Value of Financial Instruments (Details) $ in Thousands, € in Millions	Mar. 31, 2021 EUR (€)	Mar. 31, 2021 USD ($)	Feb. 11, 2021 USD ($)	Dec. 31, 2020 EUR (€)	Dec. 31, 2020 USD ($)	Jun. 10, 2020 USD ($)	Apr. 17, 2020 USD ($)	Jul. 31, 2019 USD ($)	Mar. 31, 2018 USD ($)	Mar. 07, 2018 USD ($)
Fair Value of Financial Instruments [Abstract]										
Note payable		$ 439,985			$ 319,985					
Foreign Exchange [Member]										
Fair Value of Financial Instruments [Abstract]										
Fair value, asset					400					
Fair value, liability					0					
Foreign Exchange [Member] | Purchase [Member]										
Fair Value of Financial Instruments [Abstract]										
Notional amount | €	€ 13.1			€ 18.0						
Foreign Exchange [Member] | Sale [Member]										
Fair Value of Financial Instruments [Abstract]										
Notional amount | €	€ 14.3			€ 19.6						
Interest Rate Swaps [Member]										
Fair Value of Financial Instruments [Abstract]										
Notional amount					70,000				$ 70,000	
Senior Secured Notes [Member]										
Fair Value of Financial Instruments [Abstract]										
Interest rate	5.625%	5.625%								
Face amount		$ 250,000	$ 250,000							
Note payable		250,000			0					
2018 First Lien Term Loan [Member]										
Fair Value of Financial Instruments [Abstract]										
Face amount										$ 160,000
Note payable		$ 0			130,000					

Convertible Senior Notes [Member]					
Fair Value of Financial Instruments [Abstract]					
Interest rate	2.50%	2.50%			
Face amount					$ 172,500
Note payable		$ 172,500	172,500		
Promissory Note [Member]					
Fair Value of Financial Instruments [Abstract]					
Interest rate	7.50%	7.50%			
Face amount				$ 10,000	
Note payable		$ 10,000	10,000		
Unsecured Loan [Member]					
Fair Value of Financial Instruments [Abstract]					
Interest rate	1.00%	1.00%			
Face amount					$ 7,500
Note payable		$ 7,485	7,485		
Level 2 [Member] | Foreign Exchange [Member]					
Fair Value of Financial Instruments [Abstract]					
Fair value, asset		100			
Fair value, liability		0			
Level 2 [Member] | Interest Rate Swaps [Member]					
Fair Value of Financial Instruments [Abstract]					
Fair value, liability			3,700		
Fair Value [Member] | 2018 First Lien Term Loan [Member]					
Fair Value of Financial Instruments [Abstract]					
Long-term debt			130,000		
Fair Value [Member] | Convertible Senior Notes [Member]					
Fair Value of Financial Instruments [Abstract]					

Long-term debt	$ 156,400	$ 155,300

Inventories, Change in Method of Accounting for Inventory (Details) - USD ($) $ / shares in Units, $ in Thousands	3 Months Ended			
	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2020	Dec. 31, 2019
Inventories [Abstract]				
Percentage of LIFO inventory			45.10%	
Consolidated Statement of Income [Abstract]				
Cost of sales	$ 54,380	$ 49,258		
Income before income taxes	14,182	5,906		
Income tax expense	2,654	1,407		
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499		
Earnings per common share [Abstract]				
Basic (in dollars per share)	$ 0.62	$ 0.23		
Diluted (in dollars per share)	$ 0.57	$ 0.22		
Consolidated Balance Sheets [Abstract]				
Inventories	$ 98,351		$ 85,856	
Deferred income taxes	735		0	
Accumulated earnings (deficit)	34,357		23,645	
Consolidated Statement of Cash Flows [Abstract]				
Consolidated net income	11,783	$ 4,499		
Deferred income taxes	552	1,006		
Inventories	$ (12,461)	1,784		
Change in Method of Accounting for Inventory from LIFO to FIFO [Member]				
Consolidated Statement of Income [Abstract]				
Cost of sales		49,258		
Income before income taxes		4,221		
Income tax expense		946		
Net income attributable to Turning Point Brands, Inc.		$ 3,275		
Earnings per common share [Abstract]				
Basic (in dollars per share)		$ 0.17		
Diluted (in dollars per share)		$ 0.16		
Consolidated Balance Sheets [Abstract]				
Inventories			85,856	
Deferred income taxes			5,666	
Accumulated earnings (deficit)			16,580	$ 11,000
Consolidated Statement of Cash Flows [Abstract]				
Consolidated net income		$ 3,275		
Deferred income taxes		545		
Inventories		1,784		
As Originally Reported [Member]				
Consolidated Statement of Income [Abstract]				

Cost of sales		49,258		
Income before income taxes		4,221		
Income tax expense		946		
Net income attributable to Turning Point Brands, Inc.		$ 3,275		
Earnings per common share [Abstract]				
Basic (in dollars per share)		$ 0.17		
Diluted (in dollars per share)		$ 0.16		
Consolidated Balance Sheets [Abstract]				
Inventories			79,750	
Deferred income taxes			4,082	
Accumulated earnings (deficit)			12,058	15,300
Consolidated Statement of Cash Flows [Abstract]				
Consolidated net income		$ 3,275		
Deferred income taxes		545		
Inventories		1,784		
Effect of Change [Member] | Change in Method of Accounting for Inventory from LIFO to FIFO [Member]				
Consolidated Statement of Income [Abstract]				
Cost of sales	[1]	0		
Income before income taxes	[1]	0		
Income tax expense	[1]	0		
Net income attributable to Turning Point Brands, Inc.	[1]	$ 0		
Earnings per common share [Abstract]				
Basic (in dollars per share)	[1]	$ 0		
Diluted (in dollars per share)	[1]	$ 0		
Consolidated Balance Sheets [Abstract]				
Inventories			6,106	
Deferred income taxes			1,584	
Accumulated earnings (deficit)			$ 4,522	$ (4,300)
Consolidated Statement of Cash Flows [Abstract]				
Consolidated net income	[1]	$ 0		
Deferred income taxes	[1]	0		
Inventories	[1]	$ 0		

[1] There was no LIFO impact for the three months ended March 31, 2020.

Inventories, Components of Inventories (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Inventories [Abstract]		
Raw materials and work in process	$ 7,519	$ 8,137
Leaf tobacco	41,707	32,948
Other	1,203	1,225
Inventory	98,351	85,856
Inventory valuation allowance	9,600	9,900
Zig-Zag Products [Member]		
Inventories [Abstract]		
Finished goods	21,477	14,903
Stoker's Products [Member]		
Inventories [Abstract]		
Finished goods	9,777	9,727
NewGen Products [Member]		
Inventories [Abstract]		
Finished goods	$ 16,668	$ 18,916

Other Current Assets (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Other Current Assets [Abstract]		
Inventory deposits	$ 7,369	$ 7,113
Insurance deposit	3,000	3,000
Prepaid taxes	526	813
Other	13,971	15,525
Total	$ 24,866	$ 26,451

Property, Plant, and Equipment (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	$ 32,998	$ 32,111
Accumulated depreciation	(17,350)	(16,587)
Net property, plant and equipment	15,648	15,524
Land [Member]		
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	22	22
Buildings and Improvements [Member]		
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	2,750	2,750
Leasehold Improvements [Member]		
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	4,702	4,702
Machinery and Equipment [Member]		
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	16,499	15,612
Furniture and Fixtures [Member]		
Property, Plant, and Equipment [Abstract]		
Property, plant and equipment	$ 9,025	$ 9,025

Other Assets (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Other Assets [Abstract]		
Equity investments	$ 24,016	$ 24,018
Other	2,357	2,818
Total	$ 26,373	$ 26,836

Accrued Liabilities (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Accrued Liabilities [Abstract]		
Accrued payroll and related items	$ 3,664	$ 9,459
Customer returns and allowances	5,683	5,259
Taxes payable	7,025	4,326
Lease liabilities	[1] 3,269	3,228
Accrued interest	2,924	2,096
Other	9,280	10,857
Total	$ 31,845	$ 35,225

[1] Reported within accrued liabilities on the balance sheet

Notes Payable and Long-Term Debt, Summary of Notes Payable and Long-Term Debt (Details) - USD ($) $ in Thousands	Mar. 31, 2021	Dec. 31, 2020
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	$ 439,985	$ 319,985
Less deferred finance charges	(10,183)	(5,873)
Less current maturities	(5,000)	(12,000)
Net notes payable and long-term debt	424,802	302,112
Senior Secured Notes [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	250,000	0
2018 First Lien Term Loan [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	0	130,000
Convertible Senior Notes [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	172,500	172,500
Promissory Note [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	10,000	10,000
Unsecured Loan [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Gross notes payable and long-term debt	$ 7,485	$ 7,485

Notes Payable and Long-Term Debt, Senior Secured Notes (Details) - Senior Secured Notes [Member] - USD ($) $ in Millions	3 Months Ended	
	Mar. 31, 2021	Feb. 11, 2021
Notes Payable and Long-Term Debt [Abstract]		
Face amount	$ 250.0	$ 250.0
Interest rate	5.625%	
Maturity date	Feb. 15, 2026	
Guarantee threshold amount for obligations	$ 15.0	
Redemption price as a percentage of principal amount for principal redeemed	100.00%	
Percentage of principal amount that can be redeemed with net cash proceeds from certain equity offerings	40.00%	
Redemption price as a percentage of principal amount for principal amount that can be redeemed with net cash proceeds from certain equity offerings	105.625%	
Percentage of principal amount that must remain outstanding in order to redeem 40% of principal amount with net cash proceeds from certain equity offerings	50.00%	
Period in which 10% of principal amount can be redeemed once	12 months	
Percentage of principal amount that can be redeemed once in any twelve-month period	10.00%	
Redemption price as a percentage of principal amount for principal amount that can be redeemed once in any twelve-month period	103.00%	
Redemption price as a percentage of principal amount for principal amount that can be redeemed if the Company experiences a change in control	101.00%	
Debt issuance costs		$ 6.4

Notes Payable and Long-Term Debt, 2021 Revolving Credit Facility (Details) $ in Millions	3 Months Ended		
	Mar. 31, 2021 USD ($)	Mar. 31, 2023	Feb. 11, 2021 USD ($)
2021 Revolving Credit Facility [Member]			
Notes Payable and Long-Term Debt [Abstract]			
Maximum borrowing capacity			$ 25.0
Amount drawn under credit facility	$ 0.0		
Letters of credit outstanding	$ 3.6		
Maturity date	Aug. 11, 2025		
Period prior to maturity date of Convertible Senior Notes	91 days		
Consolidated Leverage Ratio	5.50		
Exclusion threshold for letters of credit	$ 5.0		
Threshold percentage of total commitments outstanding	35.00%		
Debt issuance costs	$ 0.5		
2021 Revolving Credit Facility [Member] | Plan [Member]			
Notes Payable and Long-Term Debt [Abstract]			
Consolidated Leverage Ratio		5.25	
2021 Revolving Credit Facility [Member] | Eurodollar [Member]			
Notes Payable and Long-Term Debt [Abstract]			
Margin on variable rate	3.50%		
Letters of Credit [Member]			
Notes Payable and Long-Term Debt [Abstract]			
Maximum borrowing capacity			$ 10.0

Notes Payable and Long-Term Debt, 2018 Credit Facility (Details) $ in Millions	Mar. 07, 2018 USD ($)
2018 Credit Facility [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Secured credit facility	$ 250
Additional borrowing capacity under accordion feature	40
2018 First Lien Term Loan [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Face amount	160
2018 Revolving Credit Facility [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Maximum borrowing capacity	50
2018 Second Lien Term Loan [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Face amount	$ 40

Notes Payable and Long-Term Debt, 2018 First Lien Credit Facility (Details) $ in Thousands	3 Months Ended	
	Mar. 31, 2021 USD ($)	Mar. 31, 2020 USD ($)
Notes Payable and Long-Term Debt [Abstract]		
Financing costs of amending facility	$ 6,614	$ 168
Loss on extinguishment of debt	$ (5,706)	0
2018 First Lien Credit Facility [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Maturity date	Mar. 07, 2023	
Financing costs of amending facility	$ 700	
Payment of term loan	130,000	
Loss on extinguishment of debt	$ (5,700)	
2018 First Lien Credit Facility [Member] | Minimum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Senior leverage ratio	2.50	
Total leverage ratio	5.00	
Fixed charge coverage ratio	1.20	
2018 First Lien Credit Facility [Member] | Maximum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Senior leverage ratio	3.00	
Total leverage ratio	5.50	
2018 Revolving Credit Facility [Member] | LIBOR [Member] | Minimum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Margin on variable rate	2.75%	
2018 Revolving Credit Facility [Member] | LIBOR [Member] | Maximum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Margin on variable rate	3.50%	
2018 First Lien Term Loan [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Frequency of required payment	quarterly	
Financing costs of amending facility	$ 200	
Payment of term loan	130,000	$ 2,000
2018 First Lien Term Loan [Member] | June 30, 2018 through March 31, 2020 [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Required payment	2,000	
2018 First Lien Term Loan [Member] | June 30, 2020 through March 31, 2022 [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Required payment	3,000	
2018 First Lien Term Loan [Member] | June 30, 2022 and after [Member]		
Notes Payable and Long-Term Debt [Abstract]		

Required payment	$ 4,000
2018 First Lien Term Loan [Member] | LIBOR [Member] | Minimum [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Margin on variable rate	2.75%
2018 First Lien Term Loan [Member] | LIBOR [Member] | Maximum [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Margin on variable rate	3.50%
Convertible Senior Notes [Member]	
Notes Payable and Long-Term Debt [Abstract]	
Maturity date	Jul. 15, 2024
Maximum notes to be issued	$ 200,000

Notes Payable and Long-Term Debt, Convertible Senior Notes (Details)	1 Months Ended Jul. 31, 2019 USD ($)	3 Months Ended Mar. 31, 2021 USD ($) shares $ / shares
Notes Payable and Long-Term Debt [Abstract]		
Strike price (in dollars per share) | $ / shares		53.81
Cap price (in dollars per share) | $ / shares		82.86
Payment for cost of capped call transactions | $	$ 20,530,000	
Convertible Senior Notes [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Face amount | $	172,500,000	
Interest rate		2.50%
Maturity date		Jul. 15, 2024
Shares issued upon conversion (in shares) | shares		3,205,895
Conversion rate		18.585
Principal amount of notes to be converted | $		$ 1,000
Conversion price (in dollars per share) | $ / shares		$ 53.81
Pre-determined threshold value for adjusting conversion price as a result of dividends paid (in dollars per share) | $ / shares		$ 0.04
Debt issuance costs | $	$ 5,900,000	

Notes Payable and Long-Term Debt, Promissory Note (Details) - Promissory Note [Member] $ in Millions	3 Months Ended	
	Mar. 31, 2021 USD ($) Intallment	Jun. 10, 2020 USD ($)
Notes Payable and Long-Term Debt [Abstract]		
Face amount		$ 10.0
Interest rate	7.50%	
Number of installment payments | Intallment	2	
Required payment	$ 5.0	
Minimum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Term of note	18 months	
Maximum [Member]		
Notes Payable and Long-Term Debt [Abstract]		
Term of note	36 months	

Notes Payable and Long-Term Debt, Unsecured Loan (Details) - Unsecured Loan [Member] - USD ($) $ in Millions	3 Months Ended	
	Mar. 31, 2021	Apr. 17, 2020
Notes Payable and Long-Term Debt [Abstract]		
Face amount		$ 7.5
Maturity date	Apr. 17, 2022	
Interest rate	1.00%	

Notes Payable and Long-Term Debt, Note Payable - IVG (Details) - Note Payable - IVG [Member] - USD ($) $ in Thousands	3 Months Ended		
	Mar. 31, 2021	Mar. 31, 2020	Sep. 30, 2018
Notes Payable and Long-Term Debt [Abstract]			
Face amount			$ 4,000
Interest rate			6.00%
Maturity date	Mar. 05, 2020		
Payment of note	$ 0	$ 4,240	

Leases (Details) - USD ($) $ in Thousands	3 Months Ended Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2020
Components of Lease Expense [Abstract]			
Variable lease cost	[1] $ 205	$ 312	
Short-term lease cost	11	83	
Sublease income	(30)	(30)	
Total operating lease cost	1,163	$ 996	
Assets [Abstract]			
Right of use assets	17,406		$ 17,918
Liabilities [Abstract]			
Current lease liabilities	[2] $ 3,269		$ 3,228
Operating Lease, Liability, Current, Statement of Financial Position [Extensible List]	Accrued Liabilities, Current		Accrued Liabilities, Current
Long-term lease liabilities	$ 15,570		$ 16,117
Total lease liabilities	$ 18,839		19,345
Weighted-Average Remaining Lease Term and Discount Rate [Abstract]			
Weighted-average remaining lease term - operating leases	7 years 1 month 6 days	7 years 9 months 18 days	
Weighted-average discount rate - operating leases	4.93%	5.84%	
Maturities of Lease Liabilities [Abstract]			
2021	$ 3,078		
2022	3,795		
2023	3,528		
2024	2,485		
2025	2,125		
Years thereafter	7,427		
Total lease payments	22,438		
Less: Imputed interest	3,599		
Total lease liabilities	18,839		$ 19,345
Cost of Sales [Member]			
Components of Lease Expense [Abstract]			
Operating lease cost	225	$ 233	
Selling, General and Administrative [Member]			
Components of Lease Expense [Abstract]			
Operating lease cost	$ 752	$ 398	

[1] Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

[2] Reported within accrued liabilities on the balance sheet

Income Taxes (Details) - USD ($) $ in Millions	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Income Taxes [Abstract]		
Effective income tax rate	18.70%	23.80%
Income tax deduction related to exercise of stock options	$ 3.3	$ 0.7

Pension and Postretirement Benefit Plans (Details) - USD ($) $ in Thousands	3 Months Ended		12 Months Ended
	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2020
Pension Benefits [Member]			
Plan Contributions [Abstract]			
Contributions made by employer			$ 0
Net Periodic Benefit Cost [Abstract]			
Service cost	$ 0	$ 0	
Interest cost	0	95	
Expected return on plan assets	0	(161)	
Amortization of (gains) losses	0	36	
Net periodic benefit income	0	(30)	
Postretirement Benefits [Member]			
Net Periodic Benefit Cost [Abstract]			
Service cost	0	0	
Interest cost	0	0	
Expected return on plan assets	0	0	
Amortization of (gains) losses	0	(57)	
Net periodic benefit income	$ 0	$ (57)	

Share Incentive Plans, Equity Incentive Plans (Details) - shares	Mar. 31, 2021	Mar. 22, 2021	Apr. 28, 2016
2021 Plan [Member]			
Share Incentive Plans [Abstract]			
Number of shares authorized for issuance (in shares)		1,290,000	
Number of awards granted (in shares)	0		
Number of shares available for grant (in shares)	1,290,000		
2015 Plan [Member]			
Share Incentive Plans [Abstract]			
Number of shares authorized for issuance (in shares)			1,400,000
Number of shares available for grant (in shares)	112,052		
2015 Plan [Member] | Restricted Stock [Member]			
Share Incentive Plans [Abstract]			
Number of awards granted (in shares)	16,159		
2015 Plan [Member] | Performance-Based Restricted Stock Units [Member]			
Share Incentive Plans [Abstract]			
Number of awards granted (in shares)	563,911		
2015 Plan [Member] | Stock Options [Member]			
Share Incentive Plans [Abstract]			
Number of awards granted (in shares)	707,878		
2006 Plan [Member]			
Share Incentive Plans [Abstract]			
Number of shares available for grant (in shares)	0		

Share Incentive Plans, Stock Option Activity (Details) - 2006 and 2015 Plans [Member] - Stock Options [Member] - USD ($) $ / shares in Units, $ in Millions	3 Months Ended		12 Months Ended
	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2020
Stock Option Shares [Roll Forward]			
Outstanding, beginning balance (in shares)	711,060	696,716	696,716
Granted (in shares)	100,000		155,000
Exercised (in shares)	(74,615)		(135,146)
Forfeited (in shares)	(850)		(5,510)
Outstanding, ending balance (in shares)	735,595		711,060
Weighted Average Exercise Price [Abstract]			
Outstanding, beginning balance (in dollars per share)	$ 19.58	$ 18.13	$ 18.13
Granted (in dollars per share)	51.75		14.85
Exercised (in dollars per share)	5.70		6.37
Forfeited (in dollars per share)	21.63		27.25
Outstanding, ending balance (in dollars per share)	25.36		19.58
Weighted Average Grant Date Fair Value [Abstract]			
Outstanding, beginning balance (in dollars per share)	6.42	$ 6.17	6.17
Granted (in dollars per share)	13.77		4.41
Exercised (in dollars per share)	2.66		2.74
Forfeited (in dollars per share)	6.15		8.64
Outstanding, ending balance (in dollars per share)	$ 7.80		$ 6.42
Intrinsic value of options exercised	$ 3.3	$ 0.9	

Share Incentive Plans, Assumptions for Options Granted Under 2006 Plan (Details) - 2006 Plan [Member] - Stock Options [Member]	3 Months Ended Mar. 31, 2021 $ / shares shares
Share Incentive Plans [Abstract]	
Expected life	10 years
Exercise Price $3.83 [Member]	
Share Incentive Plans [Abstract]	
Number of options (in shares) | shares	133,612
Exercise price (in dollars per share)	$ 3.83
Number of options exercisable (in shares) | shares	133,612
Remaining lives	2 years 10 months 20 days
Expected life	10 years
Exercise price (in dollars per share)	$ 3.83
Risk free interest rate	3.57%
Expected volatility	40.00%
Dividend yield	0.00%
Fair value at grant date (in dollars per share)	$ 2.17

Share Incentive Plans, Assumptions for Options Granted Under 2015 Plan (Details) - 2015 Plan [Member] - Stock Options [Member] - $ / shares	Feb. 18, 2021	Mar. 18, 2020	Oct. 24, 2019	Mar. 20, 2019	Mar. 13, 2018	Mar. 07, 2018	May 17, 2017	Feb. 10, 2017	3 Months Ended Mar. 31, 2021
February 10, 2017 [Member]									
Share Incentive Plans [Abstract]									
Number of options granted (in shares)								40,000	
Options outstanding (in shares)									27,050
Number exercisable (in shares)									27,050
Exercise price (in dollars per share)									$ 13.00
Remaining lives									5 years 10 months 13 days
Risk free interest rate									1.89%
Expected volatility									27.44%
Expected life									6 years
Dividend yield									0.00%
Fair value at grant date (in dollars per share)									$ 3.98
May 17, 2017 [Member]									
Share Incentive Plans [Abstract]									
Number of options granted (in shares)							93,819		
Options outstanding (in shares)									54,183
Number exercisable (in shares)									54,183
Exercise price (in dollars per share)									$ 15.41
Remaining lives									6 years 1 month 17 days
Risk free interest rate									1.76%
Expected volatility									26.92%
Expected life									6 years
Dividend yield									0.00%
Fair value at grant date (in dollars per share)									$ 4.60
March 7, 2018 [Member]									

Share Incentive Plans [Abstract]		
Number of options granted (in shares)	98,100	
Options outstanding (in shares)		77,967
Number exercisable (in shares)		77,967
Exercise price (in dollars per share)		$ 21.21
Remaining lives		6 years 11 months 8 days
Risk free interest rate		2.65%
Expected volatility		28.76%
Expected life		6 years
Dividend yield		0.83%
Fair value at grant date (in dollars per share)		$ 6.37
March 13, 2018 [Member]		
Share Incentive Plans [Abstract]		
Number of options granted (in shares)	26,000	
Options outstanding (in shares)		26,000
Number exercisable (in shares)		26,000
Exercise price (in dollars per share)		$ 21.49
Remaining lives		6 years 11 months 15 days
Risk free interest rate		2.62%
Expected volatility		28.76%
Expected life		5 years 5 months 28 days
Dividend yield		0.82%
Fair value at grant date (in dollars per share)		$ 6.18
March 20, 2019 [Member]		
Share Incentive Plans [Abstract]		
Number of options granted (in shares)	155,780	
Options outstanding (in shares)		144,134
Number exercisable (in shares)		96,076

Exercise price (in dollars per share)		$ 47.58
Remaining lives		7 years 11 months 23 days
Risk free interest rate		2.34%
Expected volatility		30.95%
Expected life		6 years
Dividend yield		0.42%
Fair value at grant date (in dollars per share)		$ 15.63
October 24, 2019 [Member]		
Share Incentive Plans [Abstract]		
Number of options granted (in shares)	25,000	
Options outstanding (in shares)		25,000
Number exercisable (in shares)		16,750
Exercise price (in dollars per share)		$ 20.89
Remaining lives		8 years 6 months 25 days
Risk free interest rate		1.58%
Expected volatility		31.93%
Expected life		6 years
Dividend yield		0.95%
Fair value at grant date (in dollars per share)		$ 6.27
March 18, 2020 [Member]		
Share Incentive Plans [Abstract]		
Number of options granted (in shares)	155,000	
Options outstanding (in shares)		147,799
Number exercisable (in shares)		47,413
Exercise price (in dollars per share)		$ 14.85
Remaining lives		8 years 11 months 19 days
Risk free interest rate		0.79%
Expected volatility		35.72%
Expected life		6 years

Dividend yield		1.49%
Fair value at grant date (in dollars per share)		$ 4.41
February 18, 2021 [Member]		
Share Incentive Plans [Abstract]		
Number of options granted (in shares)	100,000	
Options outstanding (in shares)		99,850
Number exercisable (in shares)		0
Exercise price (in dollars per share)		$ 51.75
Remaining lives		9 years 10 months 20 days
Risk free interest rate		0.56%
Expected volatility		28.69%
Expected life		6 years
Dividend yield		0.55%
Fair value at grant date (in dollars per share)		$ 13.77

Share Incentive Plans, Compensation Expense Related to Options (Details) - USD ($) $ in Millions	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Compensation Expense [Abstract]		
Compensation expense related to options	$ 0.3	$ 0.2
Unrecognized compensation expense related to options	$ 1.7	
Period over which unrecognized compensation expense will be expensed	2 years 4 months 9 days	

Share Incentive Plans, Performance-Based Restricted Stock Units (Details) - Performance-Based Restricted Stock Units [Member] - USD ($) $ / shares in Units, $ in Millions	Feb. 18, 2021	Dec. 28, 2020	Mar. 18, 2020	Jul. 19, 2019	Mar. 20, 2019	Mar. 07, 2018	Mar. 31, 2017	3 Months Ended Mar. 31, 2021	Mar. 31, 2020
Share Incentive Plans [Abstract]									
Period between performance period and measurement date								65 days	
PRSUs outstanding at March 31, 2021 (in shares)								563,911	
Compensation expense								$ 1.2	$ 0.2
Unrecognized compensation expense								$ 12.6	
Employees [Member]									
Share Incentive Plans [Abstract]									
Performance period								5 years	
March 31, 2017 [Member] | Employees [Member]									
Share Incentive Plans [Abstract]									
Number of PRSUs granted (in shares)							94,000		
PRSUs outstanding at March 31, 2021 (in shares)								83,000	
Fair value as of grant date (in dollars per share)							$ 15.60		
Remaining lives								9 months	
March 7, 2018 [Member] | Employees [Member]									
Share Incentive Plans [Abstract]									
Number of PRSUs granted (in shares)						96,000			
PRSUs outstanding at March 31, 2021 (in shares)								93,000	
Fair value as of grant date (in dollars per share)						$ 21.21			
Remaining lives								1 year 9 months	
March 20, 2019 [Member]									

Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)		4,901	
PRSUs outstanding at March 31, 2021 (in shares)			0
Fair value as of grant date (in dollars per share)		$ 47.58	
March 20, 2019 [Member] | Employees [Member]			
Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)		92,500	
PRSUs outstanding at March 31, 2021 (in shares)			85,250
Fair value as of grant date (in dollars per share)		$ 47.58	
Remaining lives			2 years 9 months
July 19, 2019 [Member] | Employees [Member]			
Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)		88,582	
PRSUs outstanding at March 31, 2021 (in shares)			21,342
Fair value as of grant date (in dollars per share)		$ 52.15	
Remaining lives			1 year 9 months
March 18, 2020 [Member] | Employees [Member]			
Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)	94,000		
PRSUs outstanding at March 31, 2021 (in shares)			93,350
Fair value as of grant date (in dollars per share)	$ 14.85		
Remaining lives			3 years 9 months
December 28, 2020 [Member] | Employees [Member]			

Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)		88,169	
PRSUs outstanding at March 31, 2021 (in shares)			88,169
Fair value as of grant date (in dollars per share)		$ 46.42	
Remaining lives			2 years 9 months
February 18, 2021 [Member] | Employees [Member]			
Share Incentive Plans [Abstract]			
Number of PRSUs granted (in shares)	100,000		
PRSUs outstanding at March 31, 2021 (in shares)			99,800
Fair value as of grant date (in dollars per share)	$ 51.75		
Remaining lives			4 years 9 months

Contingencies (Details)	Oct. 09, 2020 Count	3 Months Ended Mar. 31, 2021 Subsidiary	12 Months Ended Dec. 31, 2018 Subsidiary
Contingencies [Abstract]			
Number of derivative counts filed in complaint | Count	2		
Number of franchisor subsidiaries		2	
Number of acquired franchisor subsidiaries			1
Period after Company's demand when lawsuit was filed by franchisee		16 months	

Income Per Share (Details) - USD ($) $ / shares in Units, $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Numerator [Abstract]		
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499
Denominator [Abstract]		
Basic weighted average shares (in shares)	19,093,961	19,689,446
Basic EPS (in dollars per share)	$ 0.62	$ 0.23
Numerator [Abstract]		
Net income attributable to Turning Point Brands, Inc.	$ 11,783	$ 4,499
Interest expense related to Convertible Senior Notes, net of tax	1,054	0
Diluted net income attributable to Turning Point Brands. Inc.	$ 12,837	$ 4,499
Denominator [Abstract]		
Basic weighted average shares (in shares)	19,093,961	19,689,446
Convertible Senior Notes (in shares)	3,205,895	0
Stock options (in shares)	365,211	417,354
Diluted weighted average shares (in shares)	22,665,067	20,106,800
Diluted EPS (in dollars per share)	$ 0.57	$ 0.22
Convertible Senior Notes [Member]		
Income per Share [Abstract]		
Shares excluded from calculation of diluted net income per share (in shares)		3,202,808

Segment Information, Financial Information of Reportable Segments (Details) $ in Thousands		3 Months Ended		
		Mar. 31, 2021 USD ($) Segment	Mar. 31, 2020 USD ($)	Dec. 31, 2020 USD ($)
Segment Information [Abstract]				
Number of reportable segments | Segment		3		
Segment Information [Abstract]				
Net sales		$ 107,641	$ 90,689	
Gross profit		53,261	41,431	
Operating income (loss)		24,349	9,037	
Interest expense, net		4,486	3,309	
Investment income		(25)	(91)	
Loss on extinguishment of debt		5,706	0	
Net periodic income, excluding service cost		0	(87)	
Income before income taxes		14,182	5,906	
Capital expenditures		842	877	
Depreciation and amortization		1,265	1,276	
Assets		627,305		$ 496,049
NewGen Products [Member]				
Segment Information [Abstract]				
Net sales		37,382	35,280	
Corporate Unallocated [Member]				
Segment Information [Abstract]				
Operating income (loss)	[1],[2]	(9,349)	(13,603)	
Assets	[3]	175,196		65,017
Operating costs related to PMTA			5,900	
Reportable Segments [Member] | Zig-Zag Products [Member]				
Segment Information [Abstract]				
Net sales		41,004	28,914	
Gross profit		24,896	16,132	
Operating income (loss)		19,437	12,417	
Capital expenditures		0	0	
Depreciation and amortization		114	0	
Assets		212,400		206,900
Reportable Segments [Member] | Stoker's Products [Member]				
Segment Information [Abstract]				
Net sales		29,255	26,495	
Gross profit		15,892	13,874	
Operating income (loss)		12,255	9,746	
Capital expenditures		840	860	
Depreciation and amortization		635	519	
Assets		148,093		133,016

Reportable Segments [Member] | NewGen Products [Member]

Segment Information [Abstract]			
Net sales	37,382	35,280	
Gross profit	12,473	11,425	
Operating income (loss)	2,006	477	
Capital expenditures	2	17	
Depreciation and amortization	516	$ 757	
Assets	$ 91,616		$ 91,116

[1] Includes corporate costs that are not allocated to any of the three reportable segments.

[2] Includes costs related to PMTA of $5.9 million in 2020.

[3] Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Segment Information, Revenue Disaggregation - Sales Channel (Details) - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Net Sales by Sales Channel [Abstract]		
Net sales	$ 107,641	$ 90,689
NewGen Products [Member]		
Net Sales by Sales Channel [Abstract]		
Net sales	37,382	35,280
NewGen Products [Member] | Business to Business [Member]		
Net Sales by Sales Channel [Abstract]		
Net sales	27,257	25,278
NewGen Products [Member] | Business to Consumer - Online [Member]		
Net Sales by Sales Channel [Abstract]		
Net sales	10,033	8,134
NewGen Products [Member] | Business to Consumer - Corporate Store [Member]		
Net Sales by Sales Channel [Abstract]		
Net sales	0	1,794
NewGen Products [Member] | Other [Member]		
Net Sales by Sales Channel [Abstract]		
Net sales	$ 92	$ 74

Segment Information, Net Sales - Domestic and Foreign (Details) - USD ($) $ in Thousands	3 Months Ended	
	Mar. 31, 2021	Mar. 31, 2020
Segment Information [Abstract]		
Net sales	$ 107,641	$ 90,689
Reportable Geographical Component [Member] | Domestic [Member]		
Segment Information [Abstract]		
Net sales	100,127	87,568
Reportable Geographical Component [Member] | Foreign [Member]		
Segment Information [Abstract]		
Net sales	$ 7,514	$ 3,121

Dividends and Share Repurchase (Details) - USD ($) $ / shares in Units, $ in Thousands	3 Months Ended			
	Apr. 09, 2021	Mar. 31, 2021	Mar. 31, 2020	Feb. 25, 2020
Share Repurchase [Abstract]				
Share repurchase program authorized amount				$ 50,000
Total number of shares repurchased (in shares)		119,031		
Cost of shares repurchased		$ 5,733	$ 2,627	
Average price per share (in dollars per share)		$ 48.16		
Remaining share repurchase program authorized amount		$ 34,100		
Dividend Declared Q1-2021 [Member]				
Dividends [Abstract]				
Dividend payable, date to be paid		Apr. 09, 2021		
Dividend payable, date of record		Mar. 19, 2021		
Dividend Declared Q1-2021 [Member] | Subsequent Event [Member]				
Dividends [Abstract]				
Cash dividend paid (in dollars per share)	$ 0.055			

Subsequent Events (Details) $ in Millions	Apr. 19, 2021 USD ($)
Docklight Brands, Inc. [Member]	
Subsequent Events [Abstract]	
Payment for investment	$ 8.7