

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

**Form 8-K**

**Current Report  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
Date of Report (Date of earliest event reported): June 22, 2020**

**LeMaitre Vascular, Inc.**

**(Exact name of registrant as specified in its charter)  
Commission File Number: 001-33092**

**Delaware  
(State or other jurisdiction of  
incorporation)**

**04-2825458  
(IRS Employer  
Identification No.)**

**63 Second Avenue**

**Burlington, MA 01803**

**(Address of principal executive offices, including zip code)**

**781-221-2266**

**(Registrant's telephone number, including area code)**

**(Former name or former address, if changed since last report)**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company

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

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

| Title of each class                      | Trading symbol | Name of exchange on which registered |
|--|----------------|--------------------------------------|
| Common stock, \$0.01 par value per share | LMAT           | The Nasdaq Global Market             |

## **Item 1.01. Entry into a Material Definitive Agreement.**

### *Asset Purchase Agreement*

On June 22, 2020, LeMaitre Vascular, Inc. (the "Company") entered into an asset purchase agreement (the "Asset Purchase Agreement") with Artegraft, Inc. ("Artegraft") for the purchase of the business and assets of Artegraft relating to its bovine carotid artery graft product (the "Product"). The Company consummated the acquisition and acquired the assets on June 22, 2020 (the "Closing Date") for cash consideration and contingent consideration. The cash consideration paid on the Closing Date consisted of \$72,500,000 paid on the Closing Date, of which \$7,500,000 was paid into escrow and will be held until December 31, 2021, subject to certain release conditions. The cash consideration was funded by cash on hand and a drawdown from a new credit facility, as described below in this Item 1.01. The contingent consideration consists of: (a) \$5,833,334 payable if 20,000 units of the Product are sold in the 12-month period commencing January 1, 2021 (such time period, the "Year One Period"), (b) \$5,833,333 payable if 24,000 units of the Product are sold in the 12-month period commencing January 1, 2022 (such time period, the "Year Two Period"), and (c) \$5,833,333 payable if 28,800 units of the Product are sold in the 12-month period commencing January 1, 2023 (such time period, the "Year Three Period"); together with the Year One Period and the Year Two Period, the "Earn Out Period"). In addition, if, at the end of the Year Three Period, the sum of the units of the Product sold during the Earn Out Period is greater than or equal to 58,240 units, even if a contingent payment would not have been achieved in one or more of the years in the Earn Out Period, Artegraft will receive a payment equal to (x) \$17,500,000 multiplied by a fraction, the numerator of which is aggregate number of units sold for the Earn Out Period, and the denominator of which is 72,800, less (y) the sum of the total earn out payments payable for the Earn Out Period, but in no event shall such an additional payment exceed \$17,500,000. The assets acquired from Artegraft included tangible assets, intellectual property, registrations and approvals, inventory, data, records, goodwill and certain other assets.

The Asset Purchase Agreement contains customary representations and warranties and covenants by each party. Additionally, until the end of the Year Three Period, Artegraft has agreed not to engage in certain competitive activities with respect to the business sold and not to solicit employees of the Company. Both parties are obligated, subject to certain limitations, to indemnify the other under the Asset Purchase Agreement for certain customary and other specified matters, including breaches of representations and warranties, breaches of covenants and for certain liabilities and third-party claims.

The foregoing description of the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Asset Purchase Agreement, a copy of which is attached hereto as Exhibit 2.1 and is incorporated herein by reference.

### *Credit Agreement*

On June 22, 2020, in connection with the acquisition of the Artegraft assets pursuant to the Asset Purchase Agreement and the payment of the Closing Date consideration contemplated therein, the Company entered into a Credit Agreement (the "Credit Agreement") among the Company, the lenders from time to time party thereto and KeyBank National Association, as administrative agent.

The Credit Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$40,000,000 (the "Term Loan Facility"). The interest rate applicable to loans outstanding under the Term Loan Facility is equal to, at the Company's option, (i) until the fiscal quarter ending September 30, 2020, either (x) a base rate plus a margin of 1.50% per annum or (y) LIBOR plus a margin of 2.50% per annum and (ii) thereafter, either (x) a base rate plus a margin of 1.25% and 1.75% per annum or (y) LIBOR plus a margin of between 2.25% and 2.75% per annum. Commencing on September 30, 2020, the Term Loan Facility will amortize in equal quarterly installments in aggregate quarterly amounts for the five years until the maturity date, with the balance payable on the maturity date of the Term Loan Facility (in each case subject to adjustment for prepayments). The amortization rates are as follows based on an aggregate percentage of the initial Term Loan Facility provided on the Closing Date: (i) 5.0% (the first year); (ii) 7.50% (the second year); (iii) 7.50% (the third year); (iv) 10.0% (the fourth year) and (v) 10.0% (the fifth year). The Term Loan Facility will mature on June 22, 2025.

In addition, the Credit Agreement provides for a senior secured revolving credit facility in an aggregate principal amount of \$25,000,000 (the "Revolving Credit Facility" and together with the Term Loan Facility, the "Credit Facilities"). The interest rate applicable to loans outstanding under the Revolving Credit Facility is equal to, at the Company's option, (i) until the fiscal quarter ending September 30, 2020, either (x) a base rate plus a margin of 1.50% per annum or (y) LIBOR plus a margin of 2.50% per annum and (ii) thereafter, either (i) a base rate plus a margin of 1.25% and 1.75% per annum or (ii) LIBOR plus a margin of between 2.25% and 2.75% per annum. The Revolving Credit Facility will mature on June 22, 2025.

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The obligations under the Credit Agreement are secured by a lien of substantially all of the assets of the Company pursuant to the Pledge and Security Agreement, dated as of June 22, 2020 (the “Security Agreement”), among the Company, each other additional grantor that becomes a party thereto after the Closing Date and KeyBank National Association, as administrative agent for the benefit of the secured creditors.

The Credit Agreement contains customary representations and warranties and affirmative and negative covenants that, among other things, restrict the ability of the Company and its subsidiaries, to incur additional indebtedness and liens, merge with other companies or consummate certain changes of control, acquire other companies, engage in new lines of business, make certain investments, make certain restricted payments, transfer or dispose of assets, enter into transactions with affiliates, amend certain material agreements, enter into restrictive agreements, change its fiscal year, violate certain laws as well as financial reporting requirements. These covenants are subject to a number of limitations and exceptions set forth in the Credit Agreement. In addition, the Credit Agreement contains financial covenants applicable to the Credit Facilities, that (a) limit the Company’s consolidated leverage ratio to 3.00 to 1.00, tested as of the end of each fiscal quarter ending through the maturity date (with certain increases following a material acquisition) and (b) at all times, require the Company’s fixed charge coverage ratio to be no less than 1.25 to 1.00.

Events of default under the Credit Agreement include: the failure by the Company to timely make payments due under the Credit Agreement; material misrepresentations or misstatements in any representation or warranty; failure by the Company to comply with its covenants under the Credit Agreement and other related agreements; certain defaults under a specified amount of other indebtedness of the Company or its subsidiaries; insolvency or bankruptcy-related events with respect to the Company or any of its subsidiaries; certain unsatisfied judgments against the Company or any of its subsidiaries; certain ERISA-related events reasonably expected to have a material adverse effect on the Company and its subsidiaries or the imposition of a lien on the properties of the Company or any of its subsidiaries; certain security interests or liens under the loan documents ceasing to be or the assertion by the Company to not be in full force and effect; any loan document or material provision thereof easing to be, or any proceeding is instituted asserting that such loan document or material provision is not, in full force and effect; certain environmental matters that could be reasonably be expected to have a material adverse effect; certain defaults with respect to subordinated debt (including affiliate subordinated debt); and the occurrence of a change in control.

The foregoing description of the Credit Agreement and the Security Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement and the Security Agreement, copies of which are attached hereto as Exhibits 10.1 and, 10.2, respectively, and are incorporated herein by reference.

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

The information set forth in Item 1.01 is incorporated by reference into this Item 2.03.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits. The following exhibits are furnished or filed as part of this Report, as applicable:

| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 2.1*               | <a href="#">Asset Purchase Agreement, dated June 22, 2020, by and between the Company and Artegraft, Inc.</a>  |
| 10.1               | <a href="#">Credit Agreement dated June 22, 2020, by and among the Company, the lenders from time to time party thereto and KeyBank National Association, as administrative agent.</a>         |
| 10.2               | <a href="#">Security Agreement, dated June 22, 2020, by and among the Company, each additional grantor that becomes a party thereto and KeyBank National Association, as collateral agent.</a> |
| 99.1               | <a href="#">Press release issued by LeMaitre Vascular, Inc. on June 22, 2020.</a>  |

\* Portions of the exhibit (indicated by “[\*\*\*]”) have been omitted because they are not material and would likely cause competitive harm to the Registrant if disclosed.

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**Signature(s)**

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

LeMaitre Vascular, Inc.

Date: June 24, 2020

By: Joseph P. Pellegrino, Jr.  
/s/ JOSEPH P. PELLEGRINO, JR.  
Joseph P. Pellegrino, Jr.  
**Chief Financial Officer**

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## **Exhibit Index**

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CERTAIN IDENTIFIED INFORMATION (INDICATED BY “[\*\*\*]”) HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “*Agreement*”), dated June 22, 2020 by and between **Lemaitre Vascular, Inc.**, a Delaware corporation with an address at 63 Second Ave., Burlington, Massachusetts 01803 (the “*Purchaser*”) and **Artegraft, Inc.**, a Delaware corporation, with an address at 206 North Center Drive, North Brunswick, NJ 08902 (the “*Seller*”).

### WITNESSETH:

WHEREAS, the Seller develops, manufactures, markets and sells bovine carotid artery grafts under the brand name Artegraft (the “*Products*”);

WHEREAS, the Seller desires to convey, sell, transfer and assign to the Purchaser, and the Purchaser desires to purchase from the Seller, substantially all of the assets of the Seller on the terms and conditions hereinafter set forth;

WHEREAS, the board of directors of the Seller has, upon the terms and subject to the conditions set forth herein, (a) approved this Agreement, the Transfer (as defined below) and the other transactions contemplated hereby, (b) declared that this Agreement, the Transfer and the other transactions contemplated hereby are advisable and in the best interests of the stockholders of the Seller on the terms and conditions set forth herein, (c) directed that the Transfer and the transactions contemplated hereby be submitted for consideration to the stockholders of the Seller and (d) recommended approval of this Agreement, the Transfer and the transaction contemplated hereby by the stockholders of the Seller;

WHEREAS, simultaneously with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Purchaser to enter into this Agreement, (a) certain individuals set forth on Schedule 1-A hereto (the “*Restrictive Covenant Parties*”) have delivered to Purchaser restrictive covenant agreements (the “*Restrictive Covenant Agreements*”) dated as of the date hereof and (b) certain individuals set forth on Schedule 1-B here to (the “*Key Consultants*”) have delivered to Purchaser consultant agreements (the “*Consultant Agreements*”) dated as of the date hereof;

WHEREAS, simultaneously with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Purchaser to enter into this Agreement, the Seller has obtained and delivered to Purchaser a written consent evidencing the approval of this Agreement and the transactions contemplated hereby by at least majority of the Seller’s stockholders (the “*Requisite Stockholder Approval*”), which written consent was obtained in accordance with the requirements of the Delaware General Corporation Law (“*DGCL*”), the certificate of incorporation and the bylaws of the Seller (the “*Seller Stockholder Consent*”);

WHEREAS, the board of directors of Purchaser has, upon the terms and subject to the conditions set forth herein, approved the Transfer, the execution by Purchaser of this Agreement and the consummation of the transactions contemplated hereby in accordance with the DGCL, as well as all other applicable Law.

Now, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1

### PURCHASE AND SALE OF ASSETS

**1.1 Sale of Assets.** Subject to the terms and conditions of this Agreement, at the Closing, the Seller shall sell, transfer, convey, assign and set over (“**Transfer**”) to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all of the Seller’s right, title and interest in and to any and all of its properties, rights, claims, contracts and assets, tangible or intangible, choate or inchoate, and wherever located that are used or held for use in the Business, excluding, however, the Excluded Assets (as defined below) (collectively, the “**Assets**” or the “**Purchased Assets**”). If, following the Closing, Seller identifies any assets used or held for use in the Business that were not included in the Purchased Assets (including any Contracts of Seller relating to the Business not previously identified to Purchaser), Seller shall promptly notify Purchaser and, at Purchaser’s sole option, Seller shall promptly transfer such assets to Purchaser and such assets shall be deemed to be Purchased Assets hereunder at Seller’s sole cost and expense. The parties to this Agreement agree that in acquiring the Assets, and as the owner of the Assets, except as otherwise set forth herein, the Purchaser shall have sole discretion as to how, when and whether it uses, deploys, or otherwise exploits the Assets.

**1.2 Assets; Excluded Assets.**

(A) **Assets.** The term “**Assets**” shall include, without limitation, the Seller’s right, title and interest in and to any and all of the following:

(1) **Tangible Assets.** All machinery, equipment, business machines, tooling, furniture, furnishings, plant and office equipment, general office supplies, computers, and other tangible assets or personal property (collectively, the “**Tangible Assets**”) of the Seller that are used or held for use in the Business, wherever located, including without limitation those Tangible Assets of the Seller that are listed on Schedule 4.1(F).

(2) **Inventory.** All inventories, including, without limitation, raw materials, components, work in process, finished goods, demonstration models, medical product inventories, including, without limitation, any inventory in the possession of third parties, including Seller’s Affiliates, and any consigned inventory, and administrative or other supplies, that are used or held for use in the Business (the “**Inventory**”).

(3) **Purchased Contracts.** Those agreements, orders and other rights of a contractual nature (“**Contracts**”) that are related to the Business specifically set forth on Schedule 4.1(E)(1) (the “**Purchased Contracts**”) under the heading “Purchased Contracts.”

**(4) Prepaid and Other Items.** Any and all prepaid and deferred items and advanced payments, and unbilled charges and deposits, in each case arising out of the operation or conduct of the Business.

**(5) Intellectual Property.** All licenses, patents, copyrights, designs and drawings, engineering and manufacturing documents, technical manuals, patterns, processes, formulae, know-how, trade secrets, trademarks, service marks, trade names, domain names, inventions and discoveries (whether patentable or not), computer software, source code, and other similar rights and agreements, including without limitation, any license or usage rights with respect to any of the foregoing and those items set forth on Schedule 4.1(H), and all applications therefor and registrations thereof, including without limitation all Proprietary Information (as hereinafter defined), of the Seller that are used or held for use in the Business, including the name "Artegraft" and all intellectual property associated with the same (but excluding, in each case, any Excluded Assets) (collectively, "**Intellectual Property**"), including without limitation the names of the Products and all trademark and service mark rights relating to such names, if any, along with the rights (common law or otherwise), registrations and logos relating thereto, if any, and to the design elements and any variations or combinations thereof, and any and all rights to sue for past, present and future infringement or other violations of the same, and all goodwill associated with any of the foregoing.

**(6) Permits and Approvals.** All permits, licenses, approvals, consents, registrations and authorizations related to the Business (collectively, "**Approvals**"), including without limitation all of the Approvals listed on Schedule 4.1(E)(3), in each case to the extent transferrable, together with all amendments, supplements, reports, documents and records related thereto, including without limitation all design history files, device master records, device history records, validations, clinical data, technical documentation, complaint files, records of adverse events, reports of adverse events, corrections or recalls, quality management documents and the like.

**(7) Data and Records.** The list of all customers, including those customers listed on Schedule 4.1(P), copies of Tax Returns related to the Purchased Assets and/or the Business provided to the Purchaser and its advisors in performing their due diligence in connection with the Transfer and the transactions contemplated hereby, data, books, records, correspondence, files and papers, whether in hard copy or electronic format used or held by the Seller in the Business, including, without limitation, engineering information, operating instructions, supplier and purchasing information, sales and promotional literature, manuals and data, sales and purchase and other customer correspondence, and all marketing materials, in each case, related to the Products, including photos and art-work, drawings, prints and other like materials.

**(8) Accounts Receivable.** All receivables arising out of the sale of Products by the Seller prior to the Closing, including the receivables set forth on Schedule 4.1(S), but excluding the Negative Customer Receivables (as defined below) and the Subsidiary Receivables (as defined below).

**(9) Goodwill.** All goodwill associated with the Business prior to the transactions contemplated by this Agreement.

**(10) Global Distribution Rights.** Rights to sell or have sold the Products on a worldwide basis.

**(11) Warranties.** All warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent affecting, benefiting or relating to any of the Assets.

**(12) Claims.** All Claims of the Seller against other persons relating to the Assets and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Seller relating to the Assets.

**(B) Excluded Assets.** Notwithstanding anything contained in this Agreement to the contrary, the following assets of the Seller (the “*Excluded Assets*”) are not included in the Assets:

**(1) Cash.** All cash, cash equivalents, other investments and uncleared checks and deposits in transit, checkbooks, canceled checks and bank accounts of the Seller.

**(2) Insurance.** Any policies of insurance of the Seller, whether or not relating to the Business or the Assets and all rights thereunder.

**(3) Excluded Contracts.** All Contracts other than the Purchased Contracts (the “*Excluded Contracts*”), including, without limitation, the Excluded Contracts listed on Schedule 4.1(E)(1) under the heading “*Excluded Contracts*.”

**(4) Subsidiary Equity Interests.** All equity interests of Vascular Devices, LLC (the “*Subsidiary*”) held by the Seller.

**(5) Subsidiary Receivables.** Any receivables owed by the Subsidiary to the Seller (the “*Subsidiary Receivables*”).

**(6) Negative Customer Receivables.** The receivables in respect of which amounts are owed to customers listed on Schedule 1.2(B)(6) (the “*Negative Customer Receivables*”).

**(7) Claims.** All Claims of the Seller against other persons relating to the Excluded Assets or Excluded Liabilities and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Seller relating to the Excluded Assets or Excluded Liabilities.

**(8) Transaction Documents.** All rights of the Seller under this Agreement and the other Closing Documents.

**(9) Corporate Documents and Records.** All organizational documents, minute and stock records books, books and records sufficient to generate any Tax Returns the Seller is permitted or required to file, corporate seals, Tax Returns and other Tax records of Seller.

- (10) **Tax Credits.** All Tax credits, Tax refunds and other Tax assets of the Seller.
- (11) **Patent.** All rights to Patent No. 8,163,002 entitled “Self-sealing vascular graft”.
- (12) **Employee Plans.** All Employee Plans listed on Schedule 4.1(K)(1).
- (13) **Other Excluded Assets.** The assets listed on Schedule 1.2(B)(12).

## ARTICLE 2

### CLOSING AND PURCHASE PRICE

**2.1 Closing.** The closing of the transactions contemplated hereby (the “*Closing*”) will take place via exchange of documents electronically on the date hereof. The date and time of the Closing are referred to herein as the “*Closing Date*”.

**2.2 Purchase Price.** In consideration of the Transfer to the Purchaser of the Assets, and of the assumption by the Purchaser of the Assumed Liabilities (as defined below), and of the other representations, warranties and covenants herein, the Purchaser shall pay to or for the account of the Seller the total amount of up to \$90,000,000, (the “*Purchase Price*”), of which:

**(A)** \$65,000,000 (the “*Initial Cash Consideration*”) is being paid at the Closing by the Purchaser by wire transfer of immediately available funds as follows:

(1) to the holders of all outstanding debt for borrowed money, in the amount and in accordance with the instructions set forth in the Funds Flow attached hereto as Schedule 2.2 (the “*Funds Flow*”);

(2) the Company Transaction Expenses, in the amount and in accordance with the instructions set forth in the Funds Flow; and

(3) the remainder of the Initial Cash Consideration, after giving effect to Sections 2.2(A)(1) and 2.2(A)(2), in the amount and in accordance with the instructions set forth in the Funds Flow, to the Seller;

**(B)** \$7,500,000 (the “*Escrow Amount*” and together with the Initial Cash Consideration, the “*Initial Purchase Price*”) shall be paid by the Purchaser to PNC Bank, N.A. as escrow agent (the “*Escrow Agent*”) at the Closing by wire transfer of immediately available funds, the release of which shall be subject to the terms of this Agreement and the Escrow Agreement (as defined below);

**(C)** \$5,833,334 (the “*First Earn-Out*”) shall be paid by Purchaser to the Seller upon final determination pursuant to, and in accordance with, Sections 2.2(G) through (I), that 20,000 units of Product have been sold, as determined in accordance with GAAP, to third parties (other than sales or other transfers to or among Purchaser’s controlled Affiliates) (any such unaffiliated sale, a “*Unit Sale*”) in the twelve month period commencing on January 1, 2021 (the “*Year One Period*”).

**(D)** \$5,833,333 (the “**Second Earn-Out**”) shall be paid by Purchaser to the Seller upon final determination pursuant to, and in accordance with, Sections 2.2(G) through (I), that there have been 24,000 Unit Sales in the twelve month period commencing on January 1, 2022 (the “**Year Two Period**”).

**(E)** \$5,833,333 (the “**Third Earn-Out**”, together with the First Earn-Out and the Second Earn-Out, the “**Earn-Out Payments**” and each, an “**Earn-Out Payment**”) shall be paid by the Purchaser to the Seller upon final determination pursuant to, and in accordance with, Sections 2.2(G) through (I), that there have been 28,800 Unit Sales in the twelve month period commencing on January 1, 2023 (the “**Year Three Period**”).

**(F)** Notwithstanding the foregoing, at the end of the Year Three Period, if the sum of the Unit Sales for the Year One Period, the Year Two Period and the Year Three Period is greater than or equal to 58,240 Unit Sales, the Seller will receive a payment (a “**Catch-Up Payment**”) in an amount equal to (a) \$17,500,000 **times** a fraction, the numerator of which is the aggregate number of Unit Sales for the Year One Period, the Year Two Period and the Year Three Period and the denominator of which is 72,800 **less** (b) the sum of the First Earn-Out, the Second Earn-Out and the Third Earn-Out paid or payable to the Seller. By way of example, if there are 7,000 Unit Sales in the Year One Period, 23,000 Unit Sales in the Year Two Period and 29,000 Unit Sales in the Year Three Period, the Catch-Up Payment would be equal to \$8,349,359. In no event shall the sum of the First Earn-Out, the Second Earn-Out, the Third Earn-Out and the Catch-Up Payment exceed \$17,500,000.

**(G)** The First Earn-Out, the Second Earn-Out, the Third Earn-Out and the Catch-Up Payment, as applicable, shall be paid by Purchaser to Seller by wire transfer of immediately available funds within fifteen (15) days of the date that Unit Sales for the relevant twelve month period have been finally determined by the Purchaser’s finance department and communicated to the Seller in writing, (such written communication, an “**Earnout Statement**”), which date shall be no later than sixty (60) days following the conclusion of the relevant twelve month period (each a “**Determination Date**”) and such Unit Sales have been determined to have met or exceeded the applicable Unit Sales levels set forth above. The Earnout Statement shall set forth the Unit Sales for the relevant twelve month period in reasonable detail and shall include Purchaser’s good faith computation of the Catch-Up Payment, as applicable.

**(H)** The Seller shall have the right to review the books and records of the Purchaser relevant to the calculation of Unit Sales following the delivery of the Earnout Statement for the First Earn-Out, the Second Earn-Out and the Third Earn-Out and the Catch-up Payment. The Purchaser covenants to give the Seller and its representatives access to the books, records and personnel of the Purchaser relevant to the calculation of Unit Sales, subject to reasonable advance notice and during normal business hours. If, within sixty (60) days from the delivery of an Earnout Statement, the Seller determines that the Purchaser has not paid the Seller the full amount, if any, due to it for either the First Earn-Out, the Second Earn-Out, the Third Earn-Out or the Catch-Up Payment and provides the Purchaser written notice setting forth its determination (“**Seller Determination Notice**”) and the Purchaser does not dispute the Seller’s determination pursuant to the procedure set forth in the paragraph below, then the Purchaser shall within fifteen (15) Business Days of its receipt of the Seller Determination Notice pay the Seller in full for such short-fall or the undisputed portion thereof.

**(I)** If the Purchaser delivers written notice (the “**Purchaser Dispute Notice**”) to the Seller within fifteen (15) Business Days of its receipt of the Seller Determination Notice, stating that the Purchaser objects to the Seller’s determination of the First Earn-Out, the Second Earn-Out, the Third Earn-Out or the Catch-Up Payment, as applicable, and specifying the basis for such objection in reasonable detail, the Seller and the Purchaser will use commercially reasonable efforts to attempt to resolve the dispute as promptly as practicable. If the Seller and the Purchaser are unable to reach agreement within forty-five (45) days after delivery of the Purchaser Dispute Notice, the Seller and the Purchaser agree that Wolf and Company (the “**Expert**”) shall promptly be appointed to resolve the disputed items specified in the Purchaser Dispute Notice. The Seller and Purchaser agree that if Wolf and Company shall not be available to serve as the Expert for any reason, then the Seller and the Purchaser shall designate Baker Newman Noyes as the Expert to resolve the disputed items specified in the Purchaser Dispute Notice. The Expert will only (i) resolve the disputed items specified in the Purchaser Dispute Notice and (ii) calculate the Unit Sales for the First Earn-Out, the Second Earn-Out or the Third Earn-Out, as applicable, as modified only by the resolution of such items in accordance with the terms hereof, and in each case in accordance with the methodology for the calculation of “**Unit Sales**” as provided in this Agreement. The determination of the Expert will be made within sixty (60) days after being selected and will be final and binding upon the parties absent fraud or manifest error. The Expert may not assign a value more favorable to Purchaser or the Seller, as applicable, for such item claimed by either party than the value ascribed to such item in the Purchaser Dispute Notice (in the case of Purchaser) or the Seller Determination Notice (in the case of the Seller). If the Expert determines that Seller has been underpaid for either the First Earn-Out, the Second Earn-Out, the Third Earn-Out or the Catch-Up Payment, then Purchaser shall within fifteen (15) Business Days of its receipt of the determination of the Expert pay to the Seller the amount of the underpayment. The Expert will determine the allocation of the cost of its review and report based on the inverse of the percentage its determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Expert. For example, if the items in dispute total in amount to \$1,000 and the Expert awards \$600 in favor of the Seller’s position, 60% of the costs of its review would be borne by the Purchaser and 40% of the costs would be borne by the Seller.

**(J)** From and after the Closing, subject to this Section 2.2 and Section 5.16 (including those items set forth on Schedule 5.16), the Purchaser shall have sole discretion with regard to all matters relating to the operation of the Business and the Assets, provided, however, during the period commencing on the Closing Date through the completion of the Year Three Period:

**(1)** Purchaser shall maintain books and records with respect to the operations of the Business that are reasonably sufficient to determine the Earn-Out Payments and Catch-Up Payment;

**(2)** on or prior to the 60th day following each of (i) March 31, commencing on March 31, 2021, and (ii) September 30, commencing on September 30, 2020, the Purchaser shall deliver to the Seller a computation of Unit Sales for the preceding two calendar quarters, together with information supporting such calculation; *provided*, this information shall not be binding on the parties hereto and is intended as a means of informing the Seller and no failure of the Seller to object to any such information shall be of any consequence; and

(3) Purchaser shall not take any action, or refrain from taking any action, the intent of which is to materially reduce the likelihood of an Earn-Out Payment or Catch-Up Payment being payable;

(4) Purchaser shall use its commercially reasonable efforts to ensure that documents pertaining to indebtedness or otherwise do not include any covenants or restrictions that would reasonably be expected to prevent payment of the Earn-Out Payments or the Catch-Up Payment or compliance with any provisions of this Section 2.2(J); and

(5) neither Purchaser nor any of its successors or Affiliates shall transfer, sell, license or assign, to any third party who is not an Affiliate of the Purchaser, all or substantially all of the Intellectual Property or Assets of the Business (a “**Disposal Transaction**”), unless such transferee assumes the obligations of Purchaser under Sections 2.2(C) through (J) and Section 5.16, including for the Earn-Out Payments or the Catch-Up Payments; *provided, however,* a merger or consolidation, or acquisition by a third party of all or any of the equity securities of Purchaser or its successors shall not be deemed a Disposal Transaction.

(K) The Seller acknowledges that there is no assurance that the Purchaser will achieve Unit Sales at the levels necessary to trigger the First Earn-Out, the Second Earn-Out, the Third Earn-Out or the Catch-Up Payment.

(L) The parties hereto understand and agree that (i) the contingent rights to receive any Earn-Out Payment or Catch-Up Payment (or any portion thereof) shall not be represented by any form of certificate or other instrument, are not transferable without the consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), and do not constitute an equity or ownership interest in Purchaser, (ii) Seller shall have any rights as a securityholder of Purchaser as a result of Seller’s contingent right to receive any Earn-Out Payment or Catch-Up Payment hereunder, and (iii) no interest is payable with respect to any Earn-Out Payment or Catch-Up Payment prior to such amount becoming due and payable. The parties hereto acknowledge and agree that neither the Earn-Out Payments, the Catch-Up Payment nor Seller’s right to receive any portion thereof is or shall be deemed to be a “security” as defined in the Securities Act of 1933, as amended, or other Laws.

(M) Without limiting Purchaser’s obligations under this Agreement or any of the Seller’s remedies hereunder or under applicable Law, in the event that Purchaser fails to make an Earn-Out Payment or Catch-Up Payment when due and payable hereunder, such unpaid amount shall accrue interest at a rate of Prime Rate plus 10% (and if such amount is higher than permitted by applicable Law, the highest amount permitted by applicable Law) per annum (compounded quarterly) from the Determination Date through the date of the payment of such Earn-Out Payment or Catch-Up Payment. “Prime Rate” shall mean, for any day, the rate of interest published from time to time in the Wall Street Journal, Eastern Edition and designated as the prime rate on such day.

(N) The Earn-Out Payments and the Catch-Up Payment shall be general, unsecured obligations of Purchaser.

### 2.3 Transactions to be Effectuated at the Closing.

(A) At the Closing, the Seller shall deliver or cause to be delivered to the Purchaser:

- (1) an Officer's Certificate of the Seller in the form of Exhibit A to this Agreement, duly executed by the Seller;
- (2) a Bill of Sale in the form of Exhibit B to this Agreement, duly executed by the Seller;
- (3) an Assignment and Assumption Agreement in the form of Exhibit C to this Agreement, duly executed by the Seller;
- (4) a Trademark Assignment Agreement in the form of Exhibit D to this Agreement, duly executed by the Seller;
- (5) an Escrow Agreement in the form of Exhibit E to this Agreement (the "**Escrow Agreement**" and together with those other items listed in Sections 2.3(A)(1), (2), (3) and (4) above, the "**Transaction Documents**"), duly executed by the Seller;
- (6) the Required Consents set forth on Schedule 2.3;
- (7) evidence of the release of any and all Liens encumbering the Assets, other than Permitted Liens;
- (8) Internal Revenue Service Forms W-9, certifying that the Seller and each Person to whom Purchaser is making a payment pursuant to Section 2.2(A)(1) and (2) is a "United States person" within the meaning of the Code;
- (9) evidence reasonably acceptable to the Purchaser that Seller has repaid in full all outstanding debt for borrowed money, that all commitments in respect thereof have been terminated, and that all security interests and guarantees in connection therewith have been terminated and/or released at Closing;
- (10) evidence reasonably satisfactory to Purchaser that Seller has paid in full all Transaction Expenses; and
- (11) evidence reasonably satisfactory to Purchaser and in compliance with all relevant Law and United States Food and Drug Administration ("**FDA**") regulations that Seller has assigned all of its rights, title and interest to the pre-market approval ("**PMA**") to Purchaser (a "**Seller FDA Letter**" in the form of Exhibit F to this Agreement, and together with such other documents referenced in this Section 2.3(A), collectively, the "**Seller Closing Documents**").

**(B)** At the Closing, the Purchaser shall:

- (1) deliver to the Seller the payment required under Section 2.2(A);
- (2) deliver to the Escrow Agent the payment required under Section 2.2(B);
- (3) deliver to the Seller an Assignment and Assumption Agreement in the form of Exhibit C to this Agreement, duly executed by the Purchaser;
- (4) deliver to the Seller the Escrow Agreement, duly executed by the Purchaser and the Escrow Agent in the form of Exhibit E to this Agreement;
- (5) deliver to the Seller a Secretary's Certificate in the form of Exhibit G to this Agreement, duly executed by the Purchaser;
- (6) deliver to the Seller a New Jersey Sales Tax Form ST-3 (Resale Certificate) in form and substance reasonably acceptable to the Seller, duly executed by the Purchaser; and
- (7) deliver to the Seller a California Resale Certificate in form and substance reasonably acceptable to the Seller, duly executed by the Purchaser; and
- (8) evidence reasonably satisfactory to Seller and in compliance with all relevant Law and FDA regulations that Purchaser has accepted and assumed all of Seller's rights, title and interest to the PMA (a "**Purchaser FDA Letter**" in the form of Exhibit H to this Agreement, and together with such other documents referenced in this Section 2.3(B), the "**Purchaser Closing Documents**" and together with the Seller Closing Documents, the "**Closing Documents**").

**2.4 Withholding Taxes.** The Purchaser and any other applicable withholding agent will be entitled to deduct and withhold from any amounts payable pursuant to this Agreement any withholding Taxes or other amounts required under the Internal Revenue Code of 1986, as amended (the "**Code**") or any applicable Law to be deducted and withheld. To the extent any such amounts are so deducted and withheld and properly paid over to the appropriate Governmental Entity or other appropriate Person, such amounts will be treated for all purposes of this Agreement as having been paid to the Seller or any other Person in respect of which such deduction and withholding was made; *provided, however,* that prior to each payment to be made hereunder that occurs after Closing, the Purchaser shall use commercially reasonable efforts to (i) notify the Seller of any anticipated withholding from the amounts payable hereunder, (ii) consult with the Sellers in good faith to determine whether such deduction and withholding is required under applicable Law and (iii) cooperate with the Seller in good faith to minimize the amount of any applicable withholding.

## ARTICLE 3

### LIABILITIES

**3.1 Assumed Liabilities.** As part of the consideration to be provided for the purchase of the Assets pursuant to this Agreement, at the Closing, the Purchaser shall assume, and does hereby agree to pay, satisfy, discharge and perform, in accordance with their respective terms, the following (the “**Assumed Liabilities**”):

- (i) those specific liabilities and obligations of the Seller arising under the Purchased Contracts, *provided, however,* the Purchaser shall not so assume any such obligations or liabilities under any Purchased Contract to the extent that (a) such obligations or liabilities arise out of a breach by the Seller or its Affiliates or predecessors of any such Purchased Contract that occurs prior to the Closing or (b) such liabilities relate to any period(s) prior to the Closing; and
- (ii) the Payables (as defined in Section 4.1(S)) and those payables incurred in the Ordinary Course of Business since June 19, 2020 through the Closing Date.

**3.2 Excluded Liabilities.** Notwithstanding anything to the contrary contained in this Agreement, the Schedules hereto or any other Closing Document, the Purchaser does not and will not assume or agree to pay, satisfy, discharge or perform, and shall not be deemed by virtue of the execution and delivery of this Agreement or any other Closing Document, or as a result of the consummation of the transactions contemplated by this Agreement, the Closing or otherwise to have assumed, or to have agreed to pay, satisfy, discharge or perform any of the Excluded Liabilities. The term “**Excluded Liabilities**,” as used herein, shall mean any and all liabilities, debts, claims, obligations, taxes, expenses or damages, whether known or unknown, contingent or absolute, named or unnamed, disputed or undisputed, legal or equitable, determined or indeterminable, or liquidated or unliquidated (any and all of the foregoing, “**Liabilities**”) that are not specifically Assumed Liabilities, including without limitation (i) any and all Excluded Employee Liabilities; (ii) any and all Excluded Taxes; (iii) any and all Liabilities of the Seller in respect of Excluded Contracts; (iv) other than the Payables, any and all Liabilities that may arise or have arisen in connection with either (A) products manufactured or sold by the Seller prior to the Closing, including warranty obligations and recalls or replacements requested or required by any competent Governmental Entity or otherwise deemed appropriate by mutual agreement of the Seller and the Purchaser or (B) Inventory manufactured prior to the Closing but sold after the Closing; (v) the excluded payables set forth on Schedule 3.2 (the “**Excluded Payables**”); (vi) any Transaction Expenses and Liabilities of the Seller in respect of indebtedness (whether absolute, accrued, contingent, fixed or otherwise, whether due or to become due) of the Seller of any kind; (vii) any Liabilities arising from the termination of Contracts identified on Schedule 4.1(E)(5); (viii) any and all Liabilities related to the equity interests of Seller, or warrants, options or other similar rights to purchase equity interests of Seller; (ix) any and all Liabilities arising from or related to the ownership or operation of the Assets before the Closing (including, without limitation, relating to any infringement or misappropriation of the Intellectual Property Rights of any Person, death, harm or injury to an individual, or violation of any Legal Requirement, in each case, to the extent arising from or related to the ownership or operation of the Assets before the Closing); (x) any future litigation that arises from grievances between Seller and any third party; (xi) any and all Liabilities related to the BEACH Trial (as defined in Section 5.15); and (xii) any and all Liabilities of the Subsidiary.

For purposes of this Agreement, (a) “**Excluded Taxes**” shall mean (i) all Taxes of the Seller or any of its Affiliates, or for which the Seller or any of its Affiliates is liable, for any taxable period, (ii) all Taxes relating to the Excluded Assets or Excluded Liabilities for any taxable period, (iii) all Taxes relating to the Transferred Employees, the Business, the Assets or the Assumed Liabilities for any taxable period that ends on or prior to the Closing Date and, with respect to any taxable period beginning on or prior to the Closing Date and ending after the Closing Date, the portion of such taxable period ending on the Closing Date (determined for Apportioned Obligations in accordance with Section 5.2(C)), and (iv) the portion of any Transfer Taxes required to be paid by the Seller as provided in this Agreement, and (b) “**Excluded Employee Liabilities**” shall mean any Liabilities relating to or arising out of any present and past employees of Seller or its Affiliates and/or the employment or service of any such person including with respect to Employee Plans (as defined below), other plans, contracts, programs, policies, commitments, terms and conditions of employment, employment decisions, compensation or other benefits or entitlements established or existing on or prior to Closing (whether or not such Liabilities are accrued or payable at Closing, and whether or not such Liabilities are contingent in nature), including, without limitation, any Liability (i) for any accrued wages or salaries for periods prior to the Closing, (ii) for severance, dismissal pay damages or otherwise in connection with any termination of employment by Seller or its Affiliates on or prior to the Closing, (iii) for accrued vacation or sick time accrued prior to the Closing, (iv) relating to any Employee Plan and any insurance policy or other funding medium with respect thereto, (v) for misclassification of any employee or independent contractor prior to the Closing, or (vi) any commission, transaction incentive bonus, change in control bonus or payment, “stay” bonus or similar arrangement or agreement that is owed to employees or other service providers of the Seller that arose on, prior to or in connection with the Closing, whether due or accrued after the Closing; *provided, however,* that any severance obligation contained in any employment agreement included in the Purchased Contracts shall not be deemed an Excluded Employee Liability.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

**4.1 Representations and Warranties by the Seller.** The Seller hereby represents and warrants to the Purchaser, as of the date hereof, that:

**(A) Corporate Existence and Qualification of the Seller; Due Execution; Subsidiary; Etc.** The Seller is a corporation duly organized, validly existing and subsisting under the Laws of the State of Delaware and has the requisite corporate power and authority to own, lease or otherwise hold the Assets and to carry on the Business as conducted through the Closing Date. The Seller has all requisite corporate power and authority to execute, deliver and perform this Agreement and the Seller Closing Documents, to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Seller Closing Documents to which the Seller is a party and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action, including the authorization and approval of the board of directors and the Requisite Stockholder Approval. Assuming the due execution of this Agreement and the Seller Closing Documents by the Purchaser, this Agreement and the Transaction Documents to which the Seller is a party constitute valid and binding obligations of the Seller, enforceable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to creditors’ rights generally and to general principles of equity (regardless of whether such enforcement is considered in a proceeding at law or in equity). The Seller does not own any equity interests in any entity other than the Subsidiary and the Subsidiary does not own, lease or have any rights to any assets that are used in the Business.

**(B) No Violation.** Neither the execution and delivery by the Seller of this Agreement or the Seller Closing Documents to which the Seller is a party, nor the consummation by the Seller of the transactions contemplated hereby or thereby: (i) violates any Law applicable to the Seller; (ii) violates any Order applicable to the Seller; (iii) conflicts with, or results in a breach of or default under the certificate of incorporation, bylaws or other organizational document of the Seller; (iv) results in the imposition of any Lien (as defined below), other than Permitted Liens, on any of the Assets; or (v) conflicts with any material Contract to which the Seller is a party, or any other Purchased Contract. As used herein, the term “**Lien**” means any liens, claims, mortgages, charges, security interests, leases, covenants, options, pledges, rights of others, easements, rights of refusal, reservations, restrictions, encumbrances and other defects in title. Except as set forth on Schedule 4.1(B), no consent, authorization, or approval from, or registration or filing with, any Governmental Entity or any other third party is required to be obtained or made by or with respect to the Seller in order to perform its obligations under this Agreement or the Seller Closing Documents or in connection with the consummation of the transactions hereunder and thereunder, except where the failure to be obtained or made would not reasonably be expected to be material to the Business (taken as a whole) (each such consent, authorization or approval required to be set forth on Schedule 4.1(B), a “**Required Consent**”).

**(C) Financial Information.**

**(1)** The Seller has made available to the Purchaser the audited consolidated financial statements for the fiscal years end December 31, 2018 and 2019, as well as the unaudited consolidated financial statements for the quarter ended March 31, 2020 (the “**Seller Financial Statements**”). The Seller Financial Statements were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, subject, in the case of unaudited financial statements, to normal recurring year-end adjustments and except for the absence of notes thereto.

**(2)** Each of the Seller Financial Statements fairly presents in all material respects the consolidated assets, liabilities, business, financial condition, results of operations and cash flows of the Seller as of the date thereof and for the period referred to therein, and were prepared based on the books and records of the Seller.

**(3)** The Seller maintains materially accurate books and records reflecting its assets and liabilities and maintains proper and adequate internal accounting controls which provide reasonable assurance (i) that transactions are executed with management’s authorization, (ii) that transactions are recorded as necessary to permit preparation of the financial statements of the Company and (iii) regarding the prevention of timely detection of unauthorized use or disposition of the assets of the Seller.

**(D) Absence of Certain Transactions.** Except as set forth on Schedule 4.1(D), since January 1, 2020, (i) the Seller has caused its Business to be operated only in the ordinary course, consistent with past historical practice over the preceding twelve months (“*Ordinary Course of Business*”), and (ii) there has been no Material Adverse Effect. Without limiting the generality of the foregoing, since such date, with respect to the Business, the Seller has not: disposed of any assets, incurred any accounts payable or receivable, or acquired any material assets, except in the Ordinary Course of Business; delayed payment of any accounts payable (other than those subject to a good faith dispute); (3) entered into or amended or terminated any material agreements or arrangements with customers or suppliers other than in the Ordinary Course of Business; (4) entered into or renewed any distribution agreements; (5) granted or entered into any mortgage, security, charge, surety, guarantee covering the Assets (save for the Liens set forth on Schedule 4.1(D) and which will be discharged prior to Closing and for Permitted Liens); (6) assumed any Liability or obligation, or given any commitment outside the Ordinary Course of Business; (7) permitted any insurances to lapse; (8) altered from its standard selling practices in any material respect, (9) altered from its standard collection practices in any material respect with respect to any accounts receivable, including the acceleration of accounts receivable, (10) entered into any transaction with any Affiliate with respect to its Business; (11) granted any material salary or wage increases, or changed or amended any Employee Plan except in the Ordinary Course of Business; (12) materially changed the pricing charged for the Products; or (13) agreed or committed to do any of the foregoing. To Seller’s knowledge, there is no anticipated capital expenditure anticipated through December 31, 2020, with respect to the Business, as it has been conducted by Seller through the date hereof, in excess of \$30,000, except as set forth on Schedule 4.1(D)(2).

**(E) Material Contracts and Obligations; Approvals.**

**(1) Purchased Contracts.** The Seller has delivered to the Purchaser true and complete signed copies of all Purchased Contracts that are in written form and any amendments thereto. All Purchased Contracts are listed under the sub-heading “Purchased Contracts” on Schedule 4.1(E)(1) and all Excluded Contracts are listed under the sub-heading “Excluded Contracts” on Schedule 4.1(E)(1). The Seller has no material Contracts related to the Business other than those represented by the Purchased Contracts and the Excluded Contracts. The only Contracts relating to the sales of the Products in which a payment would be owed to the counterparty due to the termination of the Contract are listed on Schedule 4.1(E)(1) under the sub-heading “Contracts with Termination Fees.” There are no oral contracts, agreements or arrangements that, individually or in the aggregate, are material to the Business as a whole.

**(2) Defaults.** With respect to each Purchased Contract to which the Seller is a party (including as an assignee), (A) such Purchased Contract is legal, valid, binding, enforceable, and in full force and effect; (B) except as set forth on Schedule 4.1(E)(2)(B), such Purchased Contract is freely assignable to the Purchaser under the terms of the Purchased Contract or under the law of the jurisdiction governing such Purchased Contract; (C) each of the Seller and, to the knowledge of the Seller, the other party or parties thereto, has performed in all material respects all obligations required to be performed by it thereunder; (D) the Seller and, to the knowledge of the Seller, the other party or parties thereto, is not (with or without the lapse of time or the giving of notice, or both) in default under any such Purchased Contract; and (E) the Seller has not received any written notice of any material default (whether monetary or non-monetary) or termination of any such Purchased Contract from any other party thereto.

**(3) Approvals.** Schedule 4.1(E)(3) sets forth a true and complete list of all Approvals currently held by the Seller, as of the date hereof, true and complete copies of which have been provided by the Seller to the Purchaser. The Approvals constitute all of the material permits, licenses, approvals, registrations, consents and authorizations required to develop, manufacture, commercialize and distribute the Products in the United States, as of the date hereof and, except as set forth on Schedule 4.1(E)(3), the Approvals are freely transferrable to Purchaser in connection with the transactions contemplated hereby. All Approvals listed in Schedule 4.1(E)(3) are valid and subsisting and in good standing and there is no material default thereunder. In the last three years, the Seller has not received written notice of any Legal Proceedings pertaining to its Business in or before any Governmental Entity, whether brought, initiated, asserted or maintained by a Governmental Entity or any other person or entity nor, to the knowledge of the Seller, has any such Legal Proceedings been threatened, to revoke, suspend or limit the rights of the Seller under any of the Approvals. Seller is in compliance in all material respects with each of the Approvals. With the exception of Approvals held by distributors or similar third parties, as identified on Schedule 4.1(E)(3), Seller holds all such Approvals and has not previously transferred any Approval to a third party.

**(4) Absence of Certain Business Contracts.** The Seller has no Contracts of the following types: (1) any Contract granting to any person a first-refusal, first-offer or other right to purchase or acquire any Assets; (2) any Contract under which the Seller is or has agreed to become a joint venture or partner with respect to the Business; (3) any Contract granting a power of attorney that could be binding upon the Purchaser; (4) any Contract with respect to letters of credit, surety or other bonds, or pursuant to which any Assets are, or are to be, subjected to a Lien; (5) any Contract containing provisions granting most favored customer pricing or preferred pricing; or (6) any Contract containing exclusivity provisions that prevent the sale of Products to any other person or in any geographic area, in each case, except as identified on Schedule 4.1(E)(4).

**(5) Disposition of Certain Contracts.** The Seller is legally entitled to terminate those Contracts identified on Schedule 4.1(E)(5) in accordance with their terms, effective as of the date hereof.

**(F) Assets.** Schedule 4.1(F) sets forth a true and complete list of all of the Tangible Assets with an original cost in excess of \$10,000 as of the date hereof, giving the location reasonably necessary for the identification of such Asset. All Tangible Assets included in the Assets are in good operating condition, normal wear and tear excepted, in all material respects.

**(G) Title to Assets.** The Seller has good title in and to, all of the Assets, free and clear of all Liens, other than Permitted Liens. Upon consummation of the transactions contemplated hereby, the Seller will transfer to the Purchaser good and valid title in and to, or a valid leasehold interest in, all of the Assets, free and clear of all Liens, other than Permitted Liens.

**(H) Intellectual Property.**

**(1)** Section 1 of Schedule 4.1(H) sets forth a true and complete list of all patents, patent applications, trademark registrations and applications, copyright registrations and applications and domain names that are included in the Intellectual Property owned by Seller, and includes the jurisdiction in which such item of Intellectual Property has been registered or filed, the applicable application and registration or serial number, the expiration date, and if applicable, any co-owners thereof. Seller owns or has the valid and legal right to use, pursuant to license, sublicense, agreement, or permission, all Intellectual Property. To the knowledge of Seller, the Intellectual Property includes all of the intellectual property rights necessary for the conduct and operation of the Business and the manufacture and sale of the Products as conducted by Seller as of the Closing Date. With respect to the Intellectual Property, except as set forth in Section 2 of Schedule 4.1(H): (i) Seller possesses all right, title and interest in and to such Intellectual Property, free and clear of any Lien (other than Permitted Liens), or otherwise has sufficient rights to use such Intellectual Property pursuant to a license or permission as may be necessary in connection with the operation of Seller's Business; (ii) such Intellectual Property that is owned by Seller (and, to Seller's knowledge, any other Intellectual Property) is not subject to any outstanding Order; (iii) no Legal Proceeding is pending or threatened which challenges the legality, validity, enforceability, use or ownership of such Intellectual Property that is owned by Seller (or, to Seller's knowledge, any other Intellectual Property); and (iv) Seller has not granted any license of any kind in and to such Intellectual Property to any third party other than pursuant to a Purchased Contract or Excluded Contract. Seller has not granted any license of any kind with respect to trade secrets or confidential information of the Company (including relating to manufacture of Products).

**(2)** To its knowledge, except as set forth in Section 2 of Schedule 4.1(H), Seller has not, in the conduct of its Business or its use of the Intellectual Property, in the last six (6) years: (a) interfered with, infringed upon or misappropriated any patent, copyright, trade secret or other intellectual property rights of third persons, or (b) received any claim, demand or notice alleging any such interference, infringement, misappropriation or violation (including any claim that it must license or refrain from using any such rights of any third party) relating to its Business. To the knowledge of Seller, no third party is currently or has at any time in the last six (6) years interfered with, infringed upon, misappropriated or otherwise come into conflict with any of the Intellectual Property, or license or distribution rights of Seller with respect to or in connection with the Seller's Business as currently or previously conducted.

**(3)** With respect to any of the Intellectual Property that is the subject of any royalty, license, sublicense, agreement or permission (in each case, an "**IP Agreement**") : (i) Seller has not at any time in the last three years received any written notice that the underlying Intellectual Property is subject to any outstanding Order (other than routine maintenance fees); and (ii) Seller has not at any time in the last three years received any written notice that any Legal Proceeding (other than routine maintenance fees) is pending or is threatened which challenges the legality, validity or enforceability of the underlying Intellectual Property.

**(4)** None of the processes, methodologies, trade secrets, research and development results, and other know-how included in any Intellectual Property that is material to the Business and the value of which is contingent upon maintenance of the confidentiality thereof, has been disclosed by the Seller to any person other than employees or contractors of the Seller who are parties to customary confidentiality and non-disclosure agreements with the Seller. Without limiting the foregoing, (a) the Seller has, and enforces, a policy requiring each employee to execute proprietary information, confidentiality and assignment agreements substantially in the Seller's standard form (a copy of which is attached as Schedule 4.1(H)(4)(a) (the "**Employee Proprietary Information Agreement**")), and (b) except as set forth on Schedule 4.1(H)(4)(b), all current and former employees, consultants and contractors of the Seller have executed an Employee Proprietary Information Agreement or, with respect to consultants and contractors, an agreement containing confidentiality provisions in Seller's favor.

(5) The Intellectual Property in the Purchased Assets constitute all of Intellectual Property owned or licensed by Seller and used in the Business.

(6) All necessary registration, maintenance and renewal fees in connection with any Intellectual Property that is owned by Seller and material to the Business have been paid, and all necessary documents, recordations and certificates in connection with such Intellectual Property have been timely filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting or maintaining such Intellectual Property. No interference, opposition, reissue, reexamination or other similar proceeding is pending in which any such Intellectual Property is being contested or challenged. Except as set forth on Schedule 4.1(H)(6), there are no actions that must be taken within the next six months, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates, for the purposes of maintaining, perfecting, preserving or renewing any item of such Intellectual Property.

(I) **Litigation.** There are not now, and in the last three years have not been any, material Legal Proceedings pending or, to the knowledge of the Seller, threatened against the Seller and pertaining to the Business, including without limitation any Legal Proceeding that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated by this Agreement or any other Seller Closing Document. There is not now, and in the last three years has not been any, material Legal Proceeding pertaining to the Seller's Business (including employees) that the Seller, has initiated or intends to initiate.

**(J) Compliance With Laws.**

(1) **General.** The Seller is not in default with respect to any Order pertaining to the Business. The Business is, and in the last three years has been, operated in material compliance with all applicable Laws.

(2) **Regulatory Compliance.** Each Product is approved, cleared or registered for sale only in the United States. The Seller represents that for the last three years it has complied in all material respects with all applicable requirements pertaining to the Seller or the FDA, including without limitation in each case:

- (i) all applicable FDA pre-market clearance ("510(k)") or PMA requirements set forth in 21 C.F.R. §§ 807, 814; including, in each case, the requirement to obtain a new clearance or approval for modifications to existing Products;
- (ii) all applicable FDA export requirements of the Federal Food, Drug and Cosmetic Act, as amended (the "FDC Act"), codified at 21 U.S.C. §§ 381, 382.
- (iii) all applicable establishment registration and device listing requirements set forth in 21 C.F.R. § 807;
- (iv) all applicable design, manufacturing and testing requirements set forth in 21 C.F.R. § 820;

(v) all applicable complaint handling requirements set forth in 21 C.F.R. § 820.198; including without limitation the record keeping and investigation requirements thereof;

(vi) the medical device reporting requirements set forth in 21 C.F.R. § 803;

(vii) all applicable FDA promotion and advertising requirements; and

(viii) the removal and corrections requirements set forth in 21 C.F.R. § 806.

There are, and for the last three years there have been, no recalls, field notifications, alerts or seizures requested or threatened relating to the Products or the Business. In the last three years, the Seller has not received written notice (whether completed or pending) of any Legal Proceeding seeking recall, suspension or seizure of any Products.

The Seller has no knowledge of any investigation of the Seller or any of the Products being conducted by the FDA or any similar Governmental Entity, nor has it received any written notice from the FDA or any similar Governmental Entity that it has commenced, or threatened to withdraw approval of any of the Seller's Products, place sales or marketing restrictions on, or request the recall of any of the Seller's Products.

### **(3) Compliance with Healthcare Laws and Privacy Laws.**

At any time during the last three years, neither Seller nor, to the knowledge of Seller, any of Seller's officers, directors, employees, agents, representatives, or properties, with respect to actions taken on behalf of Seller, (i) has violated or failed to comply in any material respect with or has been assessed a material civil money penalty under any applicable Healthcare Laws, (ii) has been excluded, suspended or debarred by the Office of Inspector General for the Department of Health and Human Services or the General Services Administration from participation in any Federal Health Care Programs, as such term is defined by 42 U.S.C. § 1320a-7b(f) and its implementing regulations, nor, to the knowledge of Seller, is there any pending or threatened investigation or government action that may lead to such an exclusion, suspension or debarment, (iii) has been convicted of any criminal offense relating to the delivery of any item or service under a Federal Health Care Programs, as such term is defined by 42 U.S.C. § 1320a-7b(f) and its implementing regulations, (iv) is a party to a Corporate Integrity Agreement with the Office of Inspector General for the Department of Health and Human Services, (v) has entered into any agreement or settlement with any Governmental Entity with regard to any alleged non-compliance with, or violation of, any Healthcare Law, or (vi) has made any payment, either directly or indirectly, of money or other assets, including any compensation Seller derives from the sale of Products, or provides any gifts, entertainment or other thing of value (hereinafter collectively referred as a "**Payment**"), to government or political party officials (including any "foreign official" as defined by the U.S. Foreign Corrupt Practices Act of 1977), employees of state-owned entities, including employees of state-owned medical/clinical facilities, officials of international organizations, candidates for public office, or representatives of other businesses or persons acting on behalf of any of the foregoing, or any other individual, where such Payment would constitute a violation of any applicable Law, including the U.S. Foreign Corrupt Practices Act of 1977 and any similar regulations worldwide.

With respect to the Business, Seller is, and at all times for the last three years, has been, operating the Business in compliance in all material respects with each Healthcare Law that is applicable to the Business.

To the knowledge of Seller, for the last three years, Seller has not been the subject of any investigation by a Governmental Entity relating to any applicable Privacy Laws.

**(K) Employees.**

**(1) Employee Benefit Plans.**

**(i)** Schedule 4.1(K)(1) sets forth a true and complete list of each material Employee Plan (as defined below). “*Employee Plan*” means any plan, program, policy, Contract or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, material fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, and whether funded or unfunded, including each “employee benefit plan,” within the meaning of Section 3(3) of ERISA (whether or not ERISA is applicable to such plan), that is maintained, contributed to or required to be contributed to by Seller or the Subsidiary for the benefit of any Employee (as defined below), or with respect to which Seller or the Subsidiary has or may have any liability or obligation

**(ii)** Each Employee Plan intended to be qualified under Section 401(a) of the Code (i) is the subject of an unrevoked favorable determination letter from the Internal Revenue Service (the “IRS”), (ii) has a request for such a letter pending with the IRS or has remaining a period of time under the Code or applicable Treasury regulations or IRS pronouncements in which to request, and make any amendments necessary to obtain, such a letter from the IRS, or (iii) is a prototype or volume submitter plan entitled to rely on a favorable opinion or advisory letter issued by the IRS to the sponsor of such prototype or volume submitter plan. A copy of the most recent determination letter from the IRS (or an opinion letter issued to the prototype sponsor of the plan on which Seller is entitled to rely) regarding such qualified status for each such plan has been delivered to the Purchaser.

**(iii)** No Affiliate of the Seller that, together with the Seller, is required to be treated as a single employer under Section 414(b), (c), (m), or (o) of the Code has within the past three (3) years maintained, established, sponsored, participated in, had any Liability with respect to or had any obligation to contribute to any: (i) plan that is or was subject to Section 302 or Title IV of ERISA or Section 412 of the Code; (ii) “multiemployer plan” within the meaning of Section 3(37) of ERISA; (iii) “multiple employer plan” (within the meaning of Section 413(c) of the Code); or (iv) a “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA.

**(iv)** No Employee Plan provides any benefits for any person upon or following retirement or termination of employment, except (i) as otherwise required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or applicable law (herein collectively referred to as “**COBRA**”), (ii) benefits through the end of the month of termination of employment, (iii) death benefits attributable to deaths occurring at or prior to termination of employment, (iv) disability benefits attributable to disabilities occurring at or prior to termination of employment, and (v) benefits payable during a period in which a group Employee Plan may be converted to an individual arrangement.

**(v)** Each Employee Plan that is in any respect a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the Code) at all times is and has been maintained in form and operation in compliance with the requirements of Section 409A of the Code and applicable guidance thereunder, and is in documentary compliance with Section 409A of the Code and the Treasury Regulations and other official guidance promulgated thereunder. No amounts under any Employee Plan have been subject to the interest and additional Tax set forth under Section 409A(a)(1)(B) of the Code and neither Seller nor the Subsidiary has any obligation to gross-up or indemnify any individual with respect to any tax imposed under Sections 4999 or 409A of the Code.

**(vi)** Except as set forth on Schedule 4.1(K)(1) or as expressly required or provided by this Agreement, neither the execution or delivery of this Agreement nor the consummation of any of the transactions contemplated hereby will (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Employee Plan that will or could reasonably be expected to result (either alone or in connection with any other circumstance or event) in any payment (whether of severance pay or otherwise), acceleration of any right, obligation or benefit, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits, including any Tax gross-up or similar “make whole” payment with respect to any Key Employee.

**(2) Labor and Employment Matters.** The Seller is in compliance in all material respects with all applicable Laws respecting employment, employment practices, terms and conditions of employment, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages, compensation, and hours of work), and in each case, with respect to Employees: (i) the Seller is not liable for any arrears of wages, compensation, penalties or other sums for failure to comply with any of the foregoing; and (ii) the Seller has paid in full to all Employees all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such Employees. The Seller is not a party to any labor or collective bargaining contract that pertains to any Employees. There are no organizing activities or collective bargaining arrangements that could affect the Business pending or under discussion by the Seller with any labor organization or Employee. There are no lockouts, strikes, slowdowns or work stoppages pending or to Seller’s knowledge threatened by or with respect to any Employees. To Seller’s knowledge, no Employee has a current intention to resign during the three (3) months following the Closing. The Seller is not currently a party to, and, to the knowledge of the Seller, the Seller has not been threatened with, any Legal Proceeding by any Employee or former employee of the Seller. There are no claims pending or to Seller’s knowledge, threatened, between the Seller and any of its Employees or former Seller employees, which controversies have resulted, or would reasonably be expected to result, in any Legal Proceeding. The Seller has not incurred any liability or obligation under the WARN Act or any similar state or local law that remains unsatisfied. No terminations prior to the Closing would trigger any notice or other obligations under the WARN Act or similar state or local law.

**(3) List of Employees.** Schedule 4.1(K)(3) contains a true and complete list of the following information for each employee of the Seller or the Subsidiary (“Employee”) and each contractor, to the extent applicable: name; job title; full-time or part-time status; hourly or salaried; exempt or non-exempt status; date of commencement of employment or engagement; current base salary or hourly wage rate and target bonus levels; participation in any Employee Plan that is intended to meet the requirements of Code Section 401(k) or is an “employee welfare benefit plan” within the meaning of Section 3(1) of ERISA (excluding, for avoidance of doubt, severance); and the amount of time and US dollar value of vacation and personal leave that is accrued but unused. Except as disclosed on Schedule 4.1(K)(3), the employment of each Employee and the engagement of each contractor is terminable by the Seller at will. All Employees have been, and currently are, properly classified as either an exempt or non-exempt employee under the Fair Labor Standards Act of 1938, as amended, and under any other applicable Law. To Seller’s Knowledge each Employee is in compliance with all applicable visa and work permit requirements.

**(L) Suppliers.** A true and complete list of the top twenty-eight (28) suppliers of the Seller for the period from January 1, 2019 through May 31, 2020, is attached hereto as Schedule 4.1(L). Other than as set forth on Schedule 4.1(L), no supplier is a sole source supplier. Other than as set forth on Schedule 4.1(L), the Seller has no knowledge of any condition, event or occurrence that could reasonably be anticipated to materially adversely affect, after the Closing, the supply of materials or provision of services to the Business by any third party.

**(M) Insurance Policies.** Schedule 4.1(M) contains a true and complete list of all policies of insurance relating to the Business currently maintained by the Seller. All such insurance is in full force and effect, and no premiums thereon are due and unpaid. No written notice of cancellation or termination has been received by the Seller with respect to any such policy of insurance. Except as disclosed on Schedule 4.1(M), the Seller does not have and has not had any insurance that is or was maintained as self-insurance.

**(N) Sufficiency of Assets:** Assuming that all Approvals and necessary consents for the transfer of Purchased Contracts are obtained prior to the Closing, the Assets include all of the assets, properties and rights (excluding any intellectual property rights) necessary to the operation of the Business as operated by the Seller as of the date hereof.

**(O) Inventory.** A true and complete aged list of the Inventory as at June 18, 2020, reported separately by product line, giving model or other identifying number, is attached hereto as Schedule 4.1(O). The Inventory consists of solely of items that are of quality usable and saleable in the Ordinary Course of Business, subject to ordinary markdowns and reserves, and that are not opened, damaged, obsolete, faulty or otherwise unmarketable. Except as set forth on Schedule 4.1(O), the Inventory does not consist of any items held on consignment. Other than as set forth on Schedule 4.1(O), the Seller has no knowledge of any condition, event or occurrence that could reasonably be anticipated to adversely affect, after the Closing, the supply of Inventory or any components thereof by any third party. Except as set forth on Schedule 4.1(O), no Distributor holds more than sixty (60) days’ worth of Inventory.

**(P) Customers.** A true and complete list of all customers of the Seller for the period from [\*\*\*] through June 17, 2020, with all available ship-to addresses, contact information and detailed sales history in both dollars and units by SKU, has been provided to the Purchaser as Schedule 4.1(P). The Seller has not received written notice from, and to the Seller's knowledge, is not aware that, any customer of the Business intends to stop purchasing, or materially reduce its volume of purchases of, Products from the Seller. A true and complete list of all customer tracing reports since [\*\*\*] from (i) all current distributors of the Seller, including the Distributors, and (ii) past distributors of the Seller that sold Products to customers since [\*\*\*] is attached hereto as Schedule 4.1(P)(2). To Seller's knowledge, such tracing reports are accurate and complete.

**(Q) Brokers' Fees.** The Seller has made no agreement or taken any other action which will cause the Purchaser to become obligated for any broker's or other fee or commission as a result of any of the transactions contemplated by this Agreement. Any broker's fee incurred by the Seller shall be paid by the Seller.

**(R) Leases and Real Property.** The lease agreements set forth on Schedule 4.1(R) are the only leases of real property used in the Business. The Seller enjoys peaceful and quiet possession of its leased premises, has not subleased or granted any rights to third parties for the use of such leased property, has not received any written notice from the landlord asserting the existence of a material default by Seller or other outstanding liability of Seller under the Lease. The Seller does not now, nor has it ever owned, any real property.

**(S) Accounts Payable and Receivable.** Set forth on Schedule 4.1(S) under the sub-heading "Payables" is a true and accurate list of all payables owed by the Seller as of June 19, 2020 (the "**Payables**"), excluding the Excluded Payables. Set forth on Schedule 4.1(S) under the sub-heading "Receivables" is a true and accurate list of all receivables owing to the Seller as of June 19, 2020 (other than the Negative Customer Receivables and the Subsidiary Receivables), (the "**Receivables**"). All of the Receivables arose from bona fide transactions entered into in the Ordinary Course of Business and, to Seller's knowledge, there exists no fact or circumstance that would reasonably be expected to result in the Receivables not being collected in full when due, without any counterclaim or set off. Any payables owed by the Seller that are not included on the list of Payables are considered to be Excluded Liabilities retained by the Seller.

**(T) Hazardous Materials.** Attached hereto as Schedule 4.1(T) is a true and correct list of all Hazardous Materials used in the Seller's Business, whether by Seller or any third party engaged by the Seller in connection with the production of any of the Products. For purposes of this Agreement, "**Hazardous Material**" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance or oil or other petroleum product, as any of the foregoing may be defined in any Environmental Law, where "**Environmental Law**" shall mean any and all applicable federal, state, county or local law, ordinance or regulation relating to the generation, discharge, release, containment, storage, transportation, disposal, assessment or cleanup of Hazardous Materials, including without limitation the following: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; (2) the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; (3) the Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136; (4) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 to 1812; (5) the Water Pollution Control Act, 32 U.S.C. §1251 et seq.; (6) the Solid Waste Disposal Act 42 U.S.C. §6901 et seq.; (7) the Clean Air Act, 42 U.S.C. §7401 et seq.; and (8) any other federal, state, county, or local statutes or implementing regulations (or any other statutes or implementing regulations of any other Governmental Entity) relating to, regulating, or having jurisdiction over, any Hazardous Material or release or threat of release of Hazardous Material. The Seller is, and for the last three years has been, in material compliance with all applicable Environmental Laws and has obtained and is in material compliance with all required material environmental permits and there are no material claims pursuant to any Environmental Law pending or, to the knowledge of the Seller, threatened, against the Seller in connection with the conduct or operation of the Business or the ownership or use of the Assets.

**(U) Products; Product Liability.**

(1) Each of the Products manufactured in the last three (3) years (including all finished goods Inventory): (a) is, and at all times up to and including the sale thereof has been, when under control of Seller, manufactured, packaged, labeled, stored, handled, distributed, shipped, marketed and promoted, and in all other respects has been, in material compliance with all applicable laws, statutes, rules, regulations, ordinances or orders administered, issued or enforced by all applicable Governmental Entities and (b) is in conformity, and at all relevant times has conformed, in all material respects to all specifications and any promises, warranties or affirmations of fact made in all regulatory filings or set forth in any Approval or made on the container or label for such Product or in connection with its sale. To the knowledge of the Seller, there is no material design or manufacturing defect with respect to the Products manufactured in the last three (3) years.

(2) The Products have a shelf life of three (3) years from the date of manufacture as manufactured by Seller as of the date hereof.

(3) Schedule 4.1(U)(2) sets forth the forms of the Seller's warranties that are currently applicable to the Products. There are no existing or, to Seller's knowledge, threatened, claims against Seller that the Products are defective or fail to meet any product warranties. Neither the Seller, nor any Affiliate of the Seller, has incurred liability arising out of any injury to, or death of, any individual as a result of the marketing, distribution, sale, ownership, possession, or use of any Product and, to Seller's knowledge, there has been no inquiry or investigation made in respect thereof by any Governmental Entity.

**(V) Taxes.**

(1) Except as set forth on Schedule 4.1(V)(1), all Taxes due and owing on or prior to Closing by the Seller (whether or not shown on any Tax Return) have been paid, and within the last three (3) years, no written claim has been made to the Seller by an authority in a jurisdiction where the Seller does not file Tax Returns that Seller is or may be subject to taxation or subject to a Tax Return filing obligation by that jurisdiction.

(2) Except as set forth on Schedule 4.1(V)(1), there is no outstanding dispute or claim concerning any Tax liability of the Seller either (i) claimed or raised by any Governmental Entity in writing or (ii) as to which the Seller or its directors or officers (or employees responsible for Tax matters) have Knowledge based upon personal contact with any agent of such Governmental Entity.

(3) The Seller (i) is not nor ever has been a member of a group of corporations or other entities with which it has filed (or been required to file) group, consolidated, combined or unitary income Tax Returns, or (ii) is not a party to any Tax allocation, Tax sharing, Tax indemnification agreement or similar Contract that would, in any manner, bind, obligate or restrict the Purchaser or its Affiliates, other than agreements entered into in the ordinary course of business the primary purpose of which was not Tax..

(4) None of the Assets is subject to escheat to any Governmental Entity under any applicable escheatment Law.

(5) Except as set forth on Schedule 4.1(V)(1), there are no Liens for Taxes upon any of the Assets, other than for Taxes not yet due and payable.

(6) The Seller is, and has been at all times since May 2, 1992, a validly electing "S" corporation within the meaning of Sections 1361 and 1362 of the Code and since January 1, 2018, a validly electing "S" corporation for New Jersey income Tax purposes.

**(W) Disclaimer of Other Representations and Warranties.** THE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER IN THIS SECTION 4.1 AND THE OTHER TRANSACTION DOCUMENTS ARE THE EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER CONCERNING THE SELLER, THE BUSINESS AND THE ASSETS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 4.1, (A) THE SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO THE CONDITION, VALUE OR QUALITY OF THE BUSINESS OR ASSETS, AND (B) THE SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT EXCEPT FOR THE REPRESENTATIONS SET FORTH IN THIS SECTION 4.1, SUCH SUBJECT ASSETS ARE "AS IS, WHERE IS" ON THE DATE HEREOF, AND IN THEIR PRESENT CONDITION, AND PURCHASER SHALL RELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4.1 OR THE OTHER TRANSACTION DOCUMENTS, THE SELLER IS NOT, DIRECTLY OR INDIRECTLY, MAKING ANY REPRESENTATIONS OR WARRANTIES REGARDING FINANCIAL PROJECTIONS OR OTHER FORWARD LOOKING STATEMENTS OF THE SELLER, THE BUSINESS OR THE ASSETS.

**4.2 Representations and Warranties by the Purchaser.** The Purchaser represents and warrants to the Seller, as of the date hereof, that:

**(A) Existence and Qualification of the Purchaser; Due Execution, Etc.** The Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all requisite corporate power and authority to execute, deliver and perform this Agreement and the Purchaser Closing Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Purchaser Closing Documents to which it is a party and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action and, assuming the due execution of this Agreement and the Purchaser Closing Documents by the Seller and its Affiliates, this Agreement and the Purchaser Closing Documents to which it is a party constitute valid and binding obligations of the Purchaser enforceable against it in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to creditors' rights generally and to general principles of equity (regardless of whether such enforcement is considered in a proceeding at law or in equity).

**(B) No Violation.** Neither the execution or delivery by the Purchaser of this Agreement or the Purchaser Closing Documents to be executed by the Purchaser nor the consummation of the transactions contemplated hereby or thereby: (i) violates or will violate any Order applicable to the Purchaser; (ii) results or will result in a breach of or default under the Certificate of Incorporation of the Purchaser; or (iii) results in any breach of any material Contract applicable to the Purchaser. No consent, authorization, or approval from, or registration or filing with, any Governmental Entity or other third party (not obtained or made as of the date hereof) is required to be obtained or made by or with respect to the Purchaser in order to perform its obligations under this Agreement.

**(C) Solvency.** Immediately after giving effect to the transactions contemplated hereby, Purchaser shall be Solvent. For purposes of this Section 4.2(C), "**Solvent**" means that, with respect to any Person and as of any date of determination, (i) the amount of the "present fair saleable value" of the assets of such Person, will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, as such quoted terms are generally determined in accordance with applicable federal laws governing determinations of the insolvency of debtors, (ii) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its indebtedness as its indebtedness becomes absolute and matured, (iii) such Person will have, as of such date, adequate capital with which to conduct its business and (iv) such Person will be able to pay its indebtedness as its indebtedness matures. For purposes of the foregoing definition only, "indebtedness" means a liability in connection with another Person's (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (B) right to any equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Purchaser.

**(D) Legal Proceedings.** There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated by this Agreement.

**(E) Reliance.** Purchaser acknowledges and agrees that it has conducted its own independent review and analysis of, and, based thereon, has formed an independent judgment concerning, the business, assets, condition, operations and prospects of the Business and the Assets. In entering into this Agreement and the Closing Documents, Purchaser has relied solely upon its own investigation and analysis and the representations and warranties of the Seller expressly contained in Section 4.1 (in each case, as qualified by the Schedules) or the other Transaction Documents, and has not relied on any other representation or warranty, and Purchaser, on its own behalf and on behalf of its Affiliates and each of its and their respective representatives, acknowledges, represents, warrants and agrees that, other than as set forth in Section 4.1 or the other Transaction Documents, none of the Seller or any of its representatives or any other Person makes or has made any representation or warranty, either express or implied, (i) as to the accuracy or completeness of any of the information provided or made available to either Purchaser or any of its Affiliates or its or their respective representatives prior to the execution of this Agreement or (ii) with respect to any projections, forecasts, estimates, plans, or budgets of future revenues, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of the Seller or the Business heretofore or hereafter delivered to or made available to Purchaser or any of its Affiliates or its or their respective representatives. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available to Purchaser or its representatives and advisors are not and shall not be deemed to be or to include representations or warranties of the Seller or any of its representatives or any other Person, and are not and shall not be deemed to be relied upon by either Purchaser in executing, delivering and performing this Agreement, the Closing Documents and consummating the transactions contemplated hereby and thereby.

**(F) Brokers' Fees.** Purchaser has made no agreement or taken any other action which will cause the Seller to become obligated for any broker's or other fee or commission as a result of any of the transactions contemplated by this Agreement. Any broker's fee incurred by the Purchaser shall be paid by the Purchaser.

**(G) Financial Ability.** Purchaser has immediately available funds as are necessary to pay the Initial Purchase Price, in accordance with Sections 2.2(A) and (B), and will have funds available to it as are necessary to pay such amounts as may be due to Seller pursuant to Sections 2.2(C) through (F) as and when such obligations arise.

**(H) Disclaimer of Other Representations and Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 4.2 AND THE OTHER TRANSACTION DOCUMENTS, PURCHASER HAS NOT MADE ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, ORAL OR WRITTEN, EXPRESS OR IMPLIED, TO SELLER OR ANY OF ITS AFFILIATES. ANY REPRESENTATIONS AND WARRANTIES NOT SPECIFICALLY SET FORTH IN THIS SECTION 4.2 OR THE OTHER TRANSACTION DOCUMENTS ARE DISCLAIMED BY PURCHASER.

## ARTICLE 5

### CERTAIN POST-CLOSING COVENANTS

#### 5.1 Warranty and Insurance.

**(A) Warranty.** The Seller shall be responsible for all customer warranties with respect to (i) the Inventory and (ii) all Products manufactured or sold by the Seller prior to the Closing Date at its own cost. The Purchaser will reasonably cooperate with the Seller at the Seller's expense in the handling of any warranty claims for the Inventory and such Products.

**(B) Insurance.** The Seller at its sole cost and expense shall maintain products liability insurance policies with coverage at levels consistent with the historic practices of the Seller prior to Closing until the fifth anniversary of the Closing Date, and naming the Purchaser as an additional insured (the "**Insurance Policies**").

#### 5.2 Cooperation Regarding Taxes; Transfer Taxes; etc.

**(A)** From and after the Closing, the Seller will use commercially reasonable efforts to make available to the Purchaser, upon written request and with the Purchaser bearing responsibility for all of its out-of-pocket expenses therefor, the Seller's personnel or representatives under the Seller's control whose assistance or participation is reasonably required by the Purchaser in anticipation of, or preparation for, existing or future Legal Proceedings, Tax Return preparation, audits or other matters in which the Purchaser or any of its Affiliates is involved and that are related to the Business. The Seller will prepare and file or cause to be prepared and filed all Tax Returns for the Seller that are required to be filed. The Seller will pay or cause to be paid all Taxes required to be paid with respect to such Tax Returns. For purposes of this Agreement, (i) "**Tax**" or "**Taxes**" includes all federal, state, local, foreign and other taxes, assessments, or governmental charges of any kind whatsoever including, without limitation, income, franchise, capital stock, excise, property, sales, use, service, service use, leasing, leasing use, gross receipts, value added, single business, alternative or add-on minimum, occupation, real and personal property, stamp, workers' compensation, severance, windfall profits, customs, duties, disability, registration, estimated, environmental (including Taxes under Section 59A of the Code), transfer, payroll, withholding, employment, unemployment and social security taxes, or other taxes of the same or similar nature, together with any interest, penalties or additions thereon and estimated payments thereof, whether disputed or not, (ii) "**Tax Return**" or "**Tax Returns**" includes all returns, reports, information returns, forms, declarations, claims for refund, statements and other documents (including any amendments thereto and including any schedule or attachment thereto) in connection with Taxes that are required to be filed with a Governmental Entity or other tax authority, or sent or provided to another party under applicable Law, and (iii) all citations to the Code or to the Treasury Regulations promulgated thereunder in this Agreement shall include any amendments or successor provisions thereto.

**(B)** All sales, use, value added, documentary, stamp, gross receipts, registration, transfer, conveyance, excise, recording, license, stock transfer stamps, and other similar Taxes and fees ("**Transfer Taxes**") arising out of or in connection with or attributable to the sale of Assets to the Purchaser or the transactions effected pursuant to this Agreement will be borne 50% by the Seller, on the one hand, and 50% by Purchaser, on the other. The parties shall use their respective commercially reasonable efforts to deliver and receive the Assets, as appropriate, through electronic delivery or in such other manner reasonably calculated in accordance with applicable Law, and take all other commercially reasonable actions necessary, to minimize or avoid the incurrence of any Transfer Taxes, including, but not limited to, by delivering the resale certificates as contemplated in Section 2.3(B)(6) and 2.3(B)(7).

**(C)** Except for the Transfer Taxes, any real property, personal property or similar Taxes applicable to the Assets for a taxable period that includes but does not end on the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between the Seller, on one hand, and the Purchaser, on the other hand, as of the Closing Date based on the number of days of such taxable period ending on and including the Closing Date (the “**Pre-Closing Apportioned Period**”) and the number of days of such taxable period after the Closing Date through the end of such taxable period (the “**Post-Closing Apportioned Period**”).

**(D)** [Reserved.]

**(E)** Notwithstanding anything herein to the contrary, the parties hereto hereby waive compliance with the bulk sales Laws of any jurisdiction in which any of the Assets are located or in which any operations relating to the Business are conducted.

**(F)** The Purchaser and the Seller agree to utilize or cause their respective Affiliates to utilize, the alternative procedure set forth in Revenue Procedure 2004-53, 2004-2 C.B. 320, with respect to wage reporting.

**5.3 Certain Information.** From and after the Closing Date, in order to enable Seller to comply with Tax or financial reporting and in connection with any claims made against or incurred by the Seller relating to the Business in respect of the period prior to the Closing Date, for a period of seven (7) years after the Closing, the Purchaser shall (i) retain the books and records relating to the Business relating to periods prior to the Closing, and (ii) upon reasonable notice, afford the Seller and its representatives reasonable access (including the right to make, at the Seller’s expense, photocopies), during normal business hours, to such books and records as the Seller may from time to time reasonably request; provided that the Purchaser shall notify the Seller at least forty-five (45) Business Days in advance of destroying any such books and records following the seventh (7th) anniversary of the Closing in order to provide the Seller the opportunity to copy such books and records in accordance with this Section 5.3. In addition, from and after the Closing Date, in order to facilitate the resolution of any claims made against or incurred by the Seller relating to the Business, the Purchaser shall make reasonably available to the Seller and its Representatives those employees of the Purchaser and its Affiliates whose assistance, expertise, testimony, notes and recollections or presence may be necessary to assist the Seller in connection with its inquiries for any of the purposes referred to above, including the presence of such persons as witnesses in hearings or trials for such purposes.

**5.4 Further Assurances.** Each party agrees that at or subsequent to the Closing, upon the written request of the other party, it will promptly execute and deliver or cause to be promptly executed and delivered any further assignment, instruments of transfer, bills of sale or conveyances, and shall otherwise cooperate with the other party, all to the extent reasonably necessary or desirable to vest fully in the Purchaser all of the Seller's right, title and interest in and to the Assets or to otherwise confirm the transactions contemplated hereby, including without limitation any filings or correspondence with any regulatory agency, notified body or other person regarding Approvals, product recalls, adverse event reports and the like. To the extent that an attempted assignment or transfer of any Purchased Contract would constitute a breach thereof, this Agreement shall not constitute an assignment or attempted assignment thereof. In such a case, the Seller shall establish, at no out of pocket costs to the Seller, with the Purchaser any back-to-back arrangement reasonably requested by the Purchaser for the period ending not later than the end of the Year 3 Period in order to provide for the Purchaser the benefits intended to be assigned under any such Purchased Contract. The Seller also agrees that, from the Closing through the completion of the Year 3 Period, it shall, at the reasonable request of the Purchaser, use commercially reasonable efforts to enforce (a) the terms of any confidentiality, non-disclosure or non-competition agreement between the Seller and any third party and (b) any provisions relating to confidentiality, non-disclosure or non-competition contained in any other agreement to which the Seller is party, in each case if the Purchaser is harmed, or has a reasonable expectation of harm, due to the breach or potential breach of any such agreement or provisions by a third party, and in each case, at Purchaser's sole cost and expense; *provided*, however that in no event the Seller be obligated to commence any Legal Proceeding in respect thereof. From and after the Closing, Seller shall cooperate with Purchaser and use its commercially reasonable efforts, solely to the extent legally permitted, to provide Purchaser with the benefit of all permits issued to Seller by the U.S. Department of Agriculture and any Approvals not transferrable to Purchaser in connection with the transactions contemplated hereby.

##### **5.5 Restrictive Covenants.**

**(A) Covenant Not to Compete or Disparage.** Seller agrees that for a period commencing on the Closing Date until the end of the Year Three Period (the "**Restricted Period**"), neither the Seller nor any controlled Affiliate of the Seller will, directly or indirectly, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing or control of, or be associated as a partner, lender, investor or representative in connection with, or serve as a director, manager or other representative of, any profit or not-for-profit business or enterprise that engages in any Competitive Activity in North America. "**Competitive Activity**" shall mean the design, manufacture, sale or distribution of any of the Products, any products similar in design, form or function to the Products or any products used distal to the aorta in the treatment of vascular or end-stage renal disease or trauma. During the Restricted Period, (i) neither the Seller nor any controlled Affiliate of the Seller will disparage the Purchaser, the Business or the Products in any way and (ii) neither the Purchaser nor any controlled Affiliate of the Purchaser will disparage the Seller or any of its officers, directors or stockholders in any way, provided, however, that nothing in the foregoing clauses (i) or (ii) will preclude any Person from enforcing its rights under this Agreement or any other Closing Document or providing truthful disclosures as required by applicable Law or legal process.

Notwithstanding the foregoing, this Section 5.5(A) shall not prohibit or restrict the ability of the Seller or its Affiliates to beneficially own 5% or less of the outstanding stock of any company engaging in Competitive Activity, *provided* such stock is publicly traded on a nationally recognized securities exchange.

**(B) Non-Solicitation; Non-Disclosure.** The Seller shall not (a) at any time during the Restricted Period directly or indirectly solicit, induce or attempt to induce to enter the employ of the Seller or any other person or entity, any employees of Seller who are hired by Purchaser and remain employed by Purchaser for a period of at least sixty (60) days following the Closing or (b) at any time after the Closing directly or indirectly divulge, or use in any way any Proprietary Information. As used herein, the term “**Proprietary Information**” shall mean all confidential information concerning the Business and the Assets, including client and customer lists, trade secrets, data, information, documents, inventions, developments, or forms owned or used by the Seller (on or prior to the Closing Date) included in the Assets transferred to the Purchaser pursuant to this Agreement, whether or not any of the foregoing is published or unpublished, protected or susceptible to protection under patent, trademark, copyright or similar laws and whether or not any party has elected to secure or attempted to secure such protection; *provided, however,* that the Seller may disclose any Proprietary Information solely to the extent and in the circumstances reasonably (i) needed to be disclosed to a court of competent jurisdiction in order for the Seller to pursue any claim against the Purchaser hereunder; (ii) required to be disclosed by a court of competent jurisdiction; or (iii) required by Law to be disclosed; *provided, further,* that with respect to clauses (ii) and (iii), to the extent practicable the Seller provides to the Purchaser reasonable advance opportunity to seek *in camera* or other protection with respect to such disclosure. Proprietary Information shall not include any information that is in the public domain other than as a result of a breach of this Section 6.4(B). The Seller will not, whether on its own behalf or on behalf of any of its Affiliates or in conjunction with any Person, intentionally interfere with the business relationship that the Purchaser has with any customer or supplier to the Business with the intent of directly causing, and in a manner that directly causes, actual, economic harm to the Purchaser; *provided, however,* that nothing in the foregoing will preclude any Person from enforcing its rights under this Agreement or any other Closing Document or providing truthful disclosures as required by applicable Law or legal process.

**(C) Intentionally Omitted.**

**(D) Reasonableness of Restrictions.** The Seller acknowledges that (i) the goodwill associated with the Business prior to the transactions contemplated by this Agreement is an integral component of the value of the Business and is reflected in the value of the consideration being paid for the Assets, and (ii) the agreements of the Seller set forth herein are necessary to preserve the value of the Business following the consummation of the transactions contemplated by this Agreement and are a material inducement to the Purchaser entering into this Agreement. The Seller also acknowledges that the limitations of time, geography and scope of activity agreed to in this Agreement are reasonable and necessary to protect the legitimate business interests of the Purchaser, which include the protection of (x) valuable confidential information related to the Business, (y) substantial relationships with customers of the Business and (z) customer goodwill associated with the ongoing Business, because, among other things: (A) the Business is in a highly competitive industry, (B) the Seller has had access to trade secrets and know-how of the Business and (C) the Seller is expected to benefit from the transactions contemplated by this Agreement.

**(E) Judicial Determinations.** It is the desire and intent of the parties to this Agreement that the provisions of this Section 5.5 be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provision or portion of this Section 5.5 shall be adjudicated to be invalid, ineffective or unenforceable, this Section 5.5 shall be deemed automatically amended to delete therefrom such provision or portion adjudicated to be invalid, ineffective or unenforceable, such amendment to apply only with respect to the operation of such provision in the particular jurisdiction with respect to which adjudication is made.

**5.6 Discharge of Liabilities.** Without limiting the provisions of Sections 3.2 or 6.1 hereof, the Seller acknowledges that it is retaining all Excluded Liabilities. The Seller hereby agrees and covenants that it shall, at all times following Closing, perform, pay or discharge when due, to the extent not theretofore performed, paid or discharged, any and all Excluded Liabilities.

**5.7 Inventory Delivery.** Promptly, but in any event within forty-five (45) days, after Closing, the Seller shall arrange, at its cost, to have all Inventory physically located at its Vista, California location shipped to the North Brunswick, New Jersey facility that the Purchaser is assuming in connection with the transactions contemplated by this Agreement; *provided, however,* that Seller shall arrange for the carrier to pick up such Inventory at such location of Seller by not later than forty-five (45) days after Closing.

**5.8 Customer Transition.** In order to facilitate the proper payment of invoices and the submission of new orders following the Closing Date, and to provide otherwise for a smooth transition of the Seller's Business, during the ninety (90) day period following the Closing, at the request of the Purchaser, the Purchaser and the Seller (at no out of pocket costs to the Seller) shall reasonably cooperate in the introduction of the Purchaser by Seller to customers of the Business, at the Purchaser's option, and, including by mailing a joint letter to customers of the Business, will direct customers to submit new orders for Products and to make payments to the Purchaser for Product shipped after the Closing Date. The Seller acknowledges that it may receive payment of Receivables or accounts receivable of the Purchaser. To the extent that the Seller receives any payments that should have been paid to the Purchaser at any time after Closing, the Seller shall promptly (and in any event no later than five (5) Business Days thereafter) pay over to the Purchaser the amount of such payments.

**5.9 Regulatory Transfers.** The Seller agrees to, and to cause its controlled Affiliates to (to the extent applicable), at no out-of-pocket cost to Seller, cooperate with the Purchaser following the Closing Date to transfer all regulatory approvals and product registrations of the Seller to the Purchaser or its designee (to the extent not transferred prior to the Closing). Following the Closing Date, the Seller grants to the Purchaser the right to refer to the Seller's regulatory filings related to the manufacture, marketing, sale and distribution of each of the Products. Upon request from the Purchaser, the Seller will supply the Purchaser with copies of such filings.

**5.10 Transfer of Tangible Assets; Books and Records.** The Seller shall take all commercially reasonable efforts to ensure that all records of the Seller, to the extent constituting Assets, are made available or provided to the Purchaser at Closing or as quickly thereafter as is practicable.

**5.11 Allocation of Purchase Price.** Within one hundred and twenty (120) calendar days after the Closing, the Purchaser shall prepare and deliver to the Seller an initial draft allocation of the consideration payable hereunder as determined for income tax purposes (including the Assumed Liabilities and any other relevant items) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder, together with reasonable supporting documentation (such allocation as finally determined pursuant to this Agreement, the “**Purchase Price Allocation**”). The Seller shall have thirty (30) calendar days after the receipt thereof to review such proposed Purchase Price Allocation and shall notify the Purchaser in writing of any objections that it has to the proposed Purchase Price Allocation. If the Seller does not object to the proposed Purchase Price Allocation in writing within such period, the Purchase Price Allocation shall, subject to the Purchaser’s right to make adjustments to the Purchase Price Allocation below, be final and binding on the parties; *provided, however,* that nothing contained herein shall prevent Purchaser or Seller from settling any proposed deficiency or adjustment by any Taxing authority based upon or arising out of the Purchase Price Allocation, and neither Purchaser nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Taxing authority challenging such Purchase Price Allocation. If the Seller timely objects to the draft Purchase Price Allocation within such thirty (30) calendar day period, the Purchaser shall consider, in good faith, Seller’s objections, and shall incorporate any comments from the Seller that Purchaser agrees with. If the Purchaser objects to any of the Seller’s objections, the Purchaser and the Seller shall use their commercially reasonable efforts to resolve such dispute. The Purchaser shall be permitted to make adjustments to the Purchase Price Allocation following such one hundred and twenty (120) calendar day period if the Purchaser reasonably determines that such adjustments are necessary or advisable in the preparation of Purchaser’s financial statements or for other applicable reporting purposes; *provided, however,* that the Purchaser shall inform the Seller of any such adjustments and, to the extent reasonably practicable, shall consult with the Seller before finalizing any such adjustments. If the Purchaser and the Seller are unable to resolve such disputes, the Purchaser and the Seller shall be permitted to file their respective Tax Returns (including but not limited to IRS Forms 8594) in the manner that they determine, which may be inconsistent with the Tax Returns filed by the other party. Any adjustments to the Purchase Price Allocation by virtue of the finalization of the purchase price in connection with any Earn-Out Payments or Catch-Up Payments hereunder shall be made using a methodology consistent with the procedures set forth in this Section 5.11.

**5.12 Public Statements.** The parties shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and no party shall issue any press release or make any public statement prior to obtaining the other party’s prior approval, which approval shall not be unreasonably withheld, except that no such approval shall be necessary to the extent disclosure may be required by applicable Law or the rules of any stock exchange. The Seller acknowledges that the Purchaser may be required to file this Agreement and one or more of the Closing Documents with the SEC.

**5.13 Seller Name.** Following the Closing, within ten (10) days following notice from the Purchaser, the Seller shall change its name to a name that does not include “Artegraft, Inc.” or any other words or phrases that are confusingly similar to the Seller’s name as of the Closing Date.

**5.14 Distributors.** The Seller, in consultation with the Purchaser, shall be responsible for notifying the distributors, dealers and agents, listed on Schedule 5.14 (collectively, the “**Distributors**”), who distribute, market or sell Product on Seller’s behalf as of the Closing Date, by not later than the close of business on the first Business Day following the Closing, of the termination of their rights to distribute, market and sell the Products subject to the conditions in the applicable agreement, and Seller shall provide evidence to Purchaser of the same; provided, that if Seller fails to provide such evidence to Purchaser by the second Business Day following the Closing, Seller agrees that Purchaser shall be permitted to so notify the Distributors by circulation of the notification forms provided to Purchaser prior to Closing. To the extent that any payments are necessary to any Distributor to terminate such rights or to obtain customer lists, to repurchase Inventory (and deliver such Inventory to the Purchaser) or to obtain cooperation in transferring Product registrations, the Seller shall bear 100% of the cost of such payments. Notwithstanding the foregoing, upon receipt of any Inventory that was previously in the possession of a Distributor, the Purchaser shall reimburse the Seller at cost for any such Inventory that is saleable pursuant to Seller’s returned goods policy.

**5.15 Clinical Trial.** As soon as reasonably practicable after the Closing (but in any event, within fifteen (15) days after permitted by the FDA), Seller shall take all appropriate action to terminate the BEACH Trial (as defined below) in accordance with 21 C.F.R. 812 and all other applicable Legal Requirements. The parties agree that Seller shall remain, to the extent permitted by FDA, the sponsor of the BEACH Trial and that Purchaser shall not assume any Contracts or Liabilities with respect to the BEACH Trial or the study plan contemplated thereby. The Seller shall submit its final report with respect to the Beach Trial to the FDA (either directly or through the Purchaser, if FDA so requires) within six (6) months after the date the Beach Trial is terminated. “**BEACH Trial**” shall mean that certain Bovine Early Access, Compatibility and Hemostasis Trial, as more fully described at <https://clinicaltrials.gov/ct2/show/NCT04146012>.

**5.16 Continuity of Operations.** The Purchaser will take the actions set forth on Schedule 5.16.

**5.17 Distributions.** Seller shall maintain sufficient cash reserves to maintain its solvency, as required under Delaware Law, including by reserving sufficient cash necessary in order to pay in full the Excluded Payables (whether or not currently due). Seller shall use its commercially reasonable efforts to pay and satisfy the Excluded Payables within one (1) Business Day following Closing, other than the Kand Settlement and Seller’s obligations under the Fidelity e-401k self-directed plan and all other employee benefits programs, including, but not limited to life insurance, which such Excluded Payables Seller shall pay and satisfy in full when due and payable. Seller shall not make any dividends or distributions until such time as its debt for borrowed money and its Transaction Expenses have been paid and satisfied in full.

**5.18 Employees.** No later than one (1) Business Day following Closing, Seller shall terminate the employment of all employees and the engagement of all consultants who are not entering into employment or consulting arrangements with Purchaser as contemplated by Schedule 5.16. Seller shall be solely liable for and pay in cash to each such individual all wages and other entitlements (including in respect of any accrued but unused vacation, personal, or other leave time to which such individual is entitled under Seller’s leave policies, or as otherwise required by applicable Law) to which such individual is entitled at such time.

## ARTICLE 6

### INDEMNIFICATION; SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

**6.1 Indemnification by Seller.** The Seller hereby agrees to defend, hold harmless and indemnify the Purchaser and its Affiliates and their respective employees, officers, directors, stockholders, partners and representatives (“**Purchaser Indemnitees**”) from and against any Losses (as defined below) which arise out of or relate to:

**(A)** any misrepresentation or inaccuracy in, or breach of, any of the representations and warranties of the Seller contained in Section 4.1 of this Agreement or in any other Transaction Document; *provided*, that for purposes of this Article 6, all of the representations and warranties set forth in Section 4.1 of this Agreement or in any other Transaction Document that are qualified as to materiality, Material Adverse Effect, or other similar qualification shall be deemed to have been made without any such qualification for purposes of determining the amount of Losses arising out of a breach of such representation or warranty;

**(B)** any breach of or failure to comply with, any of the covenants or agreements of the Seller contained in this Agreement or in any other Transaction Document;

**(C)** any Excluded Liabilities;

**(D)** any Fraud of the Seller;

**(E)** any Legal Proceeding initiated by any stockholder of the Seller based on Seller's entering into this Agreement or consummating the transactions set forth herein; or

**(F)** any Liability of the Seller that becomes a Liability of any Purchaser Indemnitee under any bulk sales, bulk transfer or similar Laws of any jurisdiction, under any common law doctrine of de facto merger or successor liability, or otherwise by operation of law (including, for the avoidance of doubt, as a result of the failure to comply with any applicable bulk sales Laws as described in Section 5.2(E)).

For purposes of this Article 6, "**Losses**" means any and all loss, damage, liability, claim, demand, settlement, judgment, award, fine, proceedings, assessments, deficiencies, penalty, Tax, fee (including reasonable attorneys' fees), charge, cost (including reasonable out-of-pocket costs of investigation, third party expert and consultant fees and expenses); *provided*, however, that Losses will not include punitive damages (unless and solely to the extent such damages are actually payable to a third party in connection with a Third Party Claim).

**6.2 Indemnification by the Purchaser.** The Purchaser hereby agrees to defend, hold harmless and indemnify the Seller and its Affiliates and their respective employees, officers, directors, stockholders, partners and representatives ("**Seller Indemnitees**") from and against any Losses which arise out of or relate to:

**(A)** any misrepresentation or inaccuracy in, or breach of, any of the representations and warranties of the Purchaser contained in Section 4.2 of this Agreement or in any other Purchaser Closing Document; *provided*, that for purposes of this Article 6, all of the representations and warranties set forth in Section 4.2 of this Agreement or in any other Purchaser Closing Document that are qualified as to materiality or other similar qualification shall be deemed to have been made without any such qualification for purposes of determining the amount of Losses arising out of a breach of such representation or warranty;

**(B)** any breach of or failure to comply with, any of the covenants or agreements of the Purchaser contained in this Agreement or in any other Purchaser Closing Document; or

**(C)** the Assumed Liabilities.

### **6.3 Survival of Representations, Warranties and Covenants; Baskets; Cap.**

**(A) Survival.** The representations and warranties contained in Articles 4 of this Agreement shall survive the Closing for [\*\*\*]. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable foregoing survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved. The covenants and other agreements contained in this Agreement that contemplate performance following the Closing shall survive the Closing until performed in accordance with their respective terms.

**(B) Basket.** The Purchaser Indemnitees shall not be entitled to recover any of Purchaser's Losses pursuant to Section 6.1(A) in respect of any claimed amount until the amount of any such Claim, individually, is in excess of \$30,000 and until the Purchaser Indemnitees' aggregate claims pursuant to Section 6.1(A) exceed \$400,000 (the "**Basket**") at which point the Indemnitor shall be obligated to reimburse the Indemnitee for all of the Purchaser's Losses above the Basket in each case where a Claim exceeds \$30,000; *provided, however,* that this sentence shall not apply to (and be disregarded in its entirety with respect to) Claims arising out of Fraud. The Seller Indemnitees shall not be entitled to recover any of Seller's Losses pursuant to Section 6.2(A) in respect of any claimed amount until the amount of any such Claim, individually, is in excess of \$30,000 and until the Seller Indemnitees' aggregate claims therefor exceed the Basket at which point the Indemnitor shall be obligated to reimburse the Indemnitee for all of the Seller's Losses above the Basket in each case where a Claim exceeds \$30,000; *provided, however* that this sentence shall not apply to (and be disregarded in its entirety with respect to) any Claims arising out of Fraud.

**(C) Cap.** The aggregate amount of all Losses for which the Seller Indemnitees shall be liable pursuant to Section 6.1 shall not exceed [\*\*\*] (the "**Cap**"), and the aggregate amount of all Losses for which the Purchaser shall be liable pursuant to Section 6.2 shall not exceed the Cap; *provided*, in each case, that the Cap shall not apply to (and shall be disregarded in their entirety with respect to) Losses arising out of Fraud or intentional breach of covenant.

**(D) No Double Recovery.** In no event shall any Purchaser Indemnitees or Seller Indemnitees be entitled to seek or receive indemnification for the same Loss more than once under this Article 6 even if a claim for indemnification in respect of such Loss has been made as a result of a breach of more than one (1) representation, warranty, covenant or agreement contained in this Agreement.

#### **6.4 Procedures.**

**(A)** In the event that any Legal Proceeding shall be threatened or instituted by a third party (each, a “**Third Party Claim**”) in respect to which indemnification may be sought by one party hereto from another party under the provisions of this Article 6, the party seeking indemnification (“**Indemnitee**”) shall, reasonably promptly after acquiring actual knowledge of such Third Party Claim, deliver a Claim Notice (as defined below) to the other party from which indemnification is being sought (“**Indemnitor**”) (and to the Escrow Agent pursuant to the Escrow Agreement if Seller is the Indemnitor); *provided, however,* that the failure to provide such notice as of any particular date as aforesaid will not affect any rights to indemnification hereunder, except to the extent, and only to such extent, that such failure to provide such notice actually and materially prejudices the Indemnitor. In the case of any Loss not involving a Legal Proceeding (each, a “**Direct Claim**”), the Indemnitee shall, reasonably promptly after acquiring actual knowledge of such Loss, deliver a Claim Notice to the Indemnitor (and to the Escrow Agent pursuant to the Escrow Agreement if Seller is the Indemnitor); *provided, however,* that the failure to provide such notice as of any particular date as aforesaid will not affect any rights to indemnification hereunder, except to the extent, and only to such extent, that such failure to provide such notice actually and materially prejudices the Indemnitor. A “**Claim Notice**” is a written notice which must contain (i) a description and, if known, the estimated amount of any Losses incurred or reasonably expected to be incurred by the Indemnitee, (ii) a reasonable explanation of the basis for the Claim Notice to the extent of the facts then known by the Indemnitee, (iii) a demand for payment of those Losses and (iv) to the extend the Claim Notice is regarding a Third Party Claim, (A) the material facts constituting the basis for such Third Party Claim and the amount of the damages claimed by the other Person, in each case to the extent known to the Indemnitee, accompanied by reasonable supporting documentation submitted by such third party (to the extent then in the possession of the Indemnitee) and (B) the assertion of the claim or the notice of the commencement of any Legal Proceeding relating to such Third Party Claim.

**(B)** In the event of a Third Party Claim, the Indemnitor shall have the right after giving the Indemnitee prompt notice (and, in any event within ten (10) Business Days from the receipt of the notice described in Section 6.4(A)), to assume the defense of and appoint counsel of the Indemnitor’s own choice at Indemnitor’s own expense, and to defend against, negotiate, settle or otherwise deal with any Legal Proceeding or demand that relates to any Purchaser’s Losses or Seller’s Losses, as the case may be, indemnified against hereunder, and, in such event, the Indemnitee will reasonably cooperate with the Indemnitor and its representatives in connection with such defense, negotiation, settlement or dealings (and the Indemnitee’s out of pocket costs and expenses arising therefrom or relating thereto shall constitute Purchaser’s Losses, if the Indemnitee is the Purchaser, or Seller’s Losses, if the Indemnitee is the Seller), and the Indemnitee will not admit any liability with respect thereto or settle, compromise, pay or discharge the same without the consent of the Indemnitor (such consent not to be unreasonably withheld, conditioned or delayed); *provided, however,* that the Indemnitor shall actively and diligently defend the Indemnitee; and *provided further* that the Indemnitee may directly participate in any such Legal Proceeding so defended with counsel of its choice at its own expense. If the Indemnitor fails to assume the defense of such Third Party Claim in accordance with the terms hereof within such ten (10) Business Day period or fails to diligently defend such Third Party Claim as reasonably determined by the Indemnitee, the Indemnitee may assume its own defense, and, in such event (a) the Indemnitor will be liable for all Purchaser’s or Seller’s Losses, as the case may be, reasonably paid or incurred in connection therewith; provided, however that in no event shall the Indemnitee admit any liability with respect thereto or settle, compromise, pay or discharge any such Legal Proceeding without the consent of the Indemnitor (such consent not to be unreasonably withheld, conditioned or delayed) and (b) the Indemnitor shall, in any case, reasonably cooperate, at its own expense, with the Indemnitee and its representatives in connection with such defense. Notwithstanding the foregoing, the Indemnitor will not have the right to defend against, negotiate, settle or otherwise control the defense of the Legal Proceeding (i) unless it assumes responsibility for the Losses underlying such Third Party Claim or (ii) if the Third Party Claim seeks criminal penalties, an injunction or other equitable relief against the Indemnitee or is asserted by or on behalf of a material supplier, customer, or business partner of the Business.

**(C)** The party assuming the defense of a Third Party Claim pursuant to Section 8.4(B) shall not, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any settlement of any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the other party for which such other party is not entitled to indemnification hereunder or which would otherwise adversely affect such other party, the Assets or the Business.

**(D)** An Indemnitee shall use commercially reasonable efforts to mitigate its Losses to the extent required under Delaware law and to pursue and collect any amounts payable under insurance policies on account of the Purchaser's Losses (if the Indemnitee is the Purchaser) or Seller's Losses (if the Indemnitee is the Seller), but only if doing so will not result in (a) an increase of greater than 10% in premiums due then or in the future to procure comparable insurance or an increase in deductibles; or (b) a decrease of greater than 10% in the levels of insurance or a change in the risks insured against; or (c) prejudice to the Indemnitee's claims or rights to indemnification hereunder. The amount of any indemnifiable Losses shall be calculated net of: the amount of any insurance proceeds, indemnification payments, contribution payments or reimbursements ("**Third Party Recovery Sources**") actually received by the Indemnitee or any Affiliate of the Indemnitee in connection with such Losses. In the event that any insurance or other recovery is made by an Indemnitee or any Affiliate of an Indemnitee from a Third Party Recovery Source with respect to any Losses for which such Indemnitee has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to the applicable Indemnitor.

**(E)** After any final Order or award shall have been rendered by a Governmental Entity of competent jurisdiction, or a written settlement shall have been consummated, or the Indemnitee and the Indemnitor shall have arrived at a mutual written agreement with respect to each separate matter alleged to be indemnified by the Indemnitor hereunder, the Indemnitee shall forward to the Indemnitor (and to the Escrow Agent pursuant to the Escrow Agreement if Seller is the Indemnitor) notice of any sums due and owing by it with respect to such matter, and the Indemnitor shall pay all of the sums so owing to the Indemnitee by wire transfer or certified or bank cashier's check within ten (10) Business Days after the date of such notice (or, if the Seller is the Indemnitor, the parties shall jointly instruct the Escrow Agent to release the sums so due and owing to the Indemnitee). Notwithstanding the foregoing, the Purchaser's sole recourse for claims for indemnification pursuant to this Article 6 shall be satisfied from the Escrow Amount; *provided, however,* that this sentence shall not apply to (and be disregarded in its entirety with respect to) Losses arising out of Fraud or intentional breach of covenant, with respect to which Purchaser shall also have recourse directly against the Seller.

**(F)** To the maximum extent permitted by Law, it is the intention of the parties to treat any indemnity payment made under this Agreement as an adjustment to the Purchase Price.

**(G)** None of the limitations of this Article 6 shall limit any remedy any party hereto may have against a Person for Fraud or intentional breach of covenant committed by such Person.

**(H)** Each party acknowledges and agrees that from and after the Closing, the indemnification provisions in this Article 6 and the payment obligations under Section 5.2 shall be the exclusive remedy of the Purchaser Indemnitees and Seller Indemnitees with respect to the transactions contemplated by this Agreement (except for Claims (i) arising from Fraud or (ii) for specific performance or other equitable or injunctive relief), and no Purchaser Indemnitee or Seller Indemnitees shall have any other rights or remedies in connection with any breach of this Agreement or any other loss arising out of the negotiation, entry into or consummation of the transactions contemplated by this Agreement.

## ARTICLE 7

### MISCELLANEOUS

**7.1 Entire Agreement.** This Agreement (including the Disclosure Schedule) together with all other Closing Documents (i) supersedes any other prior or contemporaneous agreement, understanding, promise, representation or express or implied commitment or obligation, whether written or oral, that may have been made or entered into by any party or any of their respective Affiliates (or by any director, officer or representative thereof) with respect to the subject matter hereof and (ii) constitutes the entire agreement of the parties hereto with respect to the matters provided for herein. Any other agreements, promises, representations, or assurances made by either party to this Agreement or entered into by the parties hereto on or before the date of this Agreement, whether oral or written, relating to the subject matter of this Agreement are of no force or effect.

**7.2 Amendments.** No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the Purchaser and the Seller.

**7.3 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and permitted assigns. This Agreement may not be assigned by either Party (other than the Purchaser (i) in connection with a Disposal Transaction permitted in accordance with Section 2.2(J)(3) or (ii) for the benefit of Purchaser's agents, lenders and secured hedge counterparties ("**Lender Parties**") for secured obligations to such Lender Parties), including without limitation by operation of law, without the prior written consent of the other Party; *provided, however,* that any such assignment by a party shall not relieve it of its obligations hereunder. For purposes of this Section 7.3, the term "assignment" shall include the consolidation or merger of a party with and into a third party or the sale of all or substantially all of the assets or business of a party. Any attempted assignment in violation of this Section 7.3 shall be null and void. Notwithstanding anything contained in this Section 7.3, in the event of an assignment by Purchaser as described in (ii) above, Purchaser shall not be released of any of its obligations under this Agreement.

**7.4 Counterparts.** This Agreement may be executed in one or more counterparts (any of which may be delivered by electronic transmission), each of which shall be deemed to be an original for all purposes and all of which together shall constitute one and the same instrument.

**7.5 Headings and Section References.** The headings of the sections and paragraphs of this Agreement are included for convenience only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement. All section references herein, unless otherwise clearly indicated, are to sections within this Agreement.

**7.6 No Other Warranties, Representations, Covenants or Duties.** Except as expressly provided in this Agreement, the parties disclaim any express or implied warranties, representations, covenants or duties in connection therewith.

**7.7 Waiver.** Waiver of any term, provision or condition of this Agreement by any party shall only be effective if in writing and signed by the party against whom the waiver is to be effective. No failure or delay by either the Purchaser or the Seller in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**7.8 Expenses.** The Seller and the Purchaser shall each pay all of their own respective costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby.

**7.9 Notices.** Any notice, request, instruction or other document to be given under this Agreement by any party hereto to any other party shall be in writing and delivered by email and delivered personally or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid:

If to the Seller, at the following address:

Artegraft, Inc.  
9 Airport Road  
Morristown, New Jersey 07960  
Attn: Anthony Calandra  
Email: [arc@mcguggan.com](mailto:arc@mcguggan.com)

With a copy to (which shall not constitute notice):

Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
Attn: Michael Lerner, Esq.  
Email: [mlerner@lowenstein.com](mailto:mlerner@lowenstein.com)

If to the Purchaser, at the following address:

63 Second Avenue  
Burlington, Massachusetts 01803  
Attn.: Legal Department  
Email: legal@lemaire.com

or at such other address for a party or as shall be specified by like notice. Any notice that is delivered personally in the manner provided herein shall be deemed to have been duly given to the person or entity to which it is directed upon actual receipt by such party (or its agent for notices hereunder). Any notice by e-mail transmission shall be deemed to have been duly given to the person or entity to which it is addressed upon transmission and confirmation of receipt. Any notice that is addressed as provided herein and mailed by registered or certified mail shall be conclusively presumed to have been duly given to the person or entity to which it is addressed at the close of business, local time of such party, on the third calendar day after the day it is so placed in the mail. Any notice that is addressed as provided herein and sent by a nationally recognized overnight courier service shall be conclusively presumed to have been duly given to the person or entity to which it is addressed at the close of business, local time of such person or entity, on the next Business Day following its deposit with such courier service for next day delivery.

**7.10 Governing Law.** This Agreement and the legal relations among the parties hereto shall be governed and construed in accordance with the substantive Laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

**7.11 Severability.** If any provisions hereof shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provisions shall be of no force and effect, but the illegality or unenforceability shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

**7.12 Rights of Third Parties.** Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person or entity other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

**7.13 Consent to Jurisdiction; Waiver of Jury Trial.** Each party agrees that, in the event such party elects to initiate litigation against the other party, such party shall, and may only, file such litigation in such state or federal courts of Delaware and each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each party hereby expressly and irrevocably waives any claim or defense in any action or proceeding brought in said jurisdiction and courts based on any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING DIRECTLY OR INDIRECTLY OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, EXECUTION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER AGREEMENT ENTERED INTO IN CONNECTION HEREWITH. EACH OF THE PARTIES HERETO (I) 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 ANY ACTION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.13.

**7.14 Specific Performance.** The parties agree that (i) irreparable damage would occur in the event that the provisions of this Agreement or obligations, undertakings, covenants or agreements of the parties were not performed in accordance with their specific terms or were otherwise breached and (ii) money damages, even if available, may not be an adequate remedy for any such failure to perform or any breach of this Agreement. Accordingly, it is agreed that the parties shall be entitled to an injunction or injunctions to enforce specifically the terms and provisions hereof in any court specified in Section 7.13 without proof of actual damages, this being in addition to any other remedy to which they are entitled at law or in equity. Each party agrees that it will not oppose (and hereby waives any defense in any action for) the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) the other parties have an adequate remedy at law or (y) an award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law, equity or otherwise. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement when available pursuant to the terms of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

**7.15 Exhibits and Schedules.** Any matter, information or item disclosed in the Disclosure Schedule delivered under any specific representation, warranty or covenant or Schedule number hereof, shall be deemed to have been disclosed for all purposes of this Agreement in response to every representation, warranty or covenant in this Agreement in respect of which such disclosure is reasonably apparent on its face. The inclusion of any matter, information or item in any Schedule to this Agreement shall not be deemed to constitute an admission of any liability by the Seller to any third party or otherwise imply, that any such matter, information or item is material or creates a measure for materiality for the purposes of this Agreement.

## 7.16 Certain Definitions and Interpretive Matters.

(A) **Certain Definitions.** Unless the context otherwise requires, (i) the term “**Affiliate**” means, with respect to any person, a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that other person, where “**control**” means, for purposes of the definition of “**Affiliate**”, having direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise; (ii) the term “**Business**” means the manufacture, marketing, distribution and sale of the Products; (iii) “**Business Day**” means each day other than a Saturday, Sunday or a day upon which national banks in Boston, Massachusetts are closed for ordinary domestic banking business; (iv) “**Disclosure Schedule**” or “**Schedules**” means the Schedules attached hereto, which Schedules are incorporated herein and made a part hereof fully as if the same were herein set forth in their entirety; (v) “**Fraud**” means actual and intentional fraud as defined under Delaware law in making the representations and warranties contained in this Agreement; (vi) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, and references to “**GAAP**” shall be to United States Generally Accepted Accounting Principles, consistently applied; (vii) the term “**Governmental Entity**” means any local, county, state, district, provincial, national or other government and any agencies, departments or instrumentalities thereof, and specifically includes any judicial or administrative body or tribunal and any notified body; (viii) the term “**Healthcare Laws**” means all foreign, federal, state, and local Laws relating to the regulation, provision or administration of, or billing or payment for, healthcare products or services, whether criminal or civil, including: (1) federal Laws relating to the Medicare and Medicaid programs and any other federal healthcare programs; (2) federal and state Laws relating to healthcare fraud and abuse, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the federal False Claims Act (31 U.S.C. §§ 3729 *et seq.*), the federal Stark Law (42 U.S.C. § 1395nn), the federal False Statements Statute (42 U.S.C. § 1320a-7b(a)), the Exclusions Law (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a) and the Federal Program Fraud Administrative Remedies Act (31 U.S.C. § 3801 *et seq.*); (3) the federal Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the regulations implemented thereunder and similar state Laws; (4) state Laws relating to Medicaid or any other state healthcare or health insurance programs; (5) federal or state Laws relating to billing or claims for reimbursement submitted to any government or third party payor; and (6) federal and state Laws relating to health information privacy, including the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder, the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”), enacted as part of the American Recovery and Reinvestment Act of 2009, and any HITECH implementing regulations; each of (1) through (6) as amended from time to time; and all comparable foreign, federal, state and local Laws and the rules and regulations promulgated pursuant to all such Laws, each as amended from time to time, (ix) the term “**knowledge**” means the actual knowledge of any of Anthony Calandra, Richard Gibson and Cathy VanDerVeer after reasonably inquiry of such individuals’ direct reports, (x) the term “**Laws**” means any United States or non-United States national, state, county or local statute, law, ordinance, rule, regulation, order, judgment or ruling; (xi) “**Legal Proceedings**” means any claim, action, suit, arbitration or judicial, administrative, investigative or other proceeding, brought by, before or under the jurisdiction of any Governmental Entity, including without limitation, lawsuits brought by third parties; (xii) “**Material Adverse Effect**” means any fact, circumstance, event, result, occurrence, change or effect that is, or would reasonably be expected to be, materially adverse to the Assets, the financial condition, the results of operations of the Business taken as a whole; *provided, however,* that “Material Adverse Effect” shall not include effects on such Assets or financial condition, results of operations of the Business arising out of or attributable to (1) any change, effect, event, occurrence, state of facts or development that generally affects the industry in which the Seller operates (including legal and regulatory changes), (2) any regional, national or international economic, financial, social or political change, event, occurrence, state of facts or development, (3) effects resulting from changes in the financial, banking, or securities markets, (4) any effects or conditions resulting from an outbreak or escalation of hostilities, acts of terrorism, political instability or other regional, national or international calamity, crisis or emergency, or any governmental or other response to any of the foregoing, in each case whether or not involving the United States, (5) effects arising from changes in Laws or GAAP, including from the adoption or addition of any new Laws or the rescission, expiration or retirement of any current Law, (6) effects relating to any acts of God, including any natural disaster such as a hurricane or earthquake, (7) any epidemic, pandemic or disease outbreak (including the COVID-19 pandemic), or any Law, pronouncement or guideline issued by a Governmental Entity, the Centers for Disease Control and Prevention, the World Health Organization or industry group providing for business closures, “sheltering-in-place” or other restrictions that relate to, or arise out of, an epidemic, pandemic or disease outbreak (including the COVID-19 pandemic) or any change in such Law, pronouncement or guideline or interpretation thereof, (8) effects resulting from the identity of Purchaser or its Affiliates, or (9) any failure by the Seller or the Business to meet any internal or published projections, forecasts or predication of revenues, earnings or cash flows for any period (although this clause (9) shall not apply to the facts and circumstances that may have given rise or contributed to any such failure); *provided, further,* that, with respect to each of clauses (1), (2), (3), and (5) above, any such change, effect, event, occurrence, state of facts or development shall only be disregarded and not taken into account in determining whether a Material Adverse Effect has occurred to the extent that such change, effect, event, occurrence, state of facts or development does not have a disproportionate effect on the Business, taken as a whole, relative to other participants in the industry in which the Seller participates; (xiii) the term “**Order**” shall mean any judgment, decree, order, writ, award, assessment, ruling or injunction of a court or other Governmental Entity of competent jurisdiction, (xiv) “**or**” is disjunctive but not necessarily exclusive; (xv) the term “**Permitted Liens**” shall mean (A) Liens for current Taxes not yet due and payable, or the validity or amount of which is being contested in good faith by appropriate proceedings; (B) statutory or common law Liens to secure obligations to landlords, lessors or renters under leases or rental agreements incurred by the Seller in the Ordinary Course of Business; (C) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by applicable Law incurred by the Seller in the Ordinary Course of Business; (D) licenses of Intellectual Property pursuant to a Purchased Contract or an Excluded Contract (other than any licenses of trade secrets or confidential information of the Company (including relating to manufacture of Products), which, for the avoidance of doubt, shall not be deemed to be Permitted Liens); (E) statutory or common law Liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies, and other like Liens incurred by the Seller in the Ordinary Course of Business; and (F) zoning, entitlement, conservation restriction and other land use and Environmental Laws by Governmental Entity; (xvi) the term “**Person**” means any individual, corporation (including any not for profit corporation), general or limited partnership, limited liability partnership, joint venture, estate, business trust, trust, firm, company (including any limited liability company or joint stock company), association, organization, labor union, Governmental Authority or any other entity of any kind; (xvii) the term “**Personal Data**” shall mean a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information or customer or account number, Internet Protocol address, persistent identifier, or any other piece of information that individually, or when combined with other information, allows the identification of a natural person or which is otherwise classified as “personal data,” “personal information,” “personally identifiable information” (or similar term) under any applicable Law; (xviii) the term “**Privacy Laws**” means all applicable Laws and Seller’s commitments (including privacy notices and policies) related to data privacy, data protection, data security, or marketing of Personal Data, contractual and fiduciary obligations related to data privacy, data protection, data security or marketing of Personal Data to which the Seller is party, and the requirements of self-regulatory frameworks or organizations which the Seller is, or has been, contractually obligated to comply with, provided that the foregoing shall not include any Healthcare Laws and (xix) “**Transaction Expenses**” means any fees, costs and expenses incurred or subject to reimbursement by Seller, in each case in connection with the negotiation, execution, delivery and performance of this Agreement and any other Closing Document, and the consummation of the transactions contemplated hereby and thereby, including: (a) any brokerage fees, commissions, finders’ fees, or financial advisory fees, and, in each case, related costs and expenses; (b) any fees, costs and expenses of counsel, accountants, or other advisors or service providers; (c) any fees, costs and expenses or payments related to any transaction bonus, discretionary bonus, change-of-control payment, or any other compensatory payments made to any Employee as a result of the execution of this Agreement and/or the

other Closing Documents or in connection with the transactions contemplated hereby and thereby; and (d) costs and expenses in respect of the Insurance Policies.

**(B) Interpretive Matters.** No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof.

**IN WITNESS WHEREOF**, the Purchaser and the Seller have caused this Agreement to be executed by their duly authorized respective officers, all as of the date first written above.

**PURCHASER: LEMAITRE VASCULAR, INC.**

By:/s/ David B. Roberts

Name: David B. Roberts

Title: President

**SELLER: ARTEGRAFT, INC.**

By:/s/ Anthony Calandra

Name: Anthony Calandra

Title: Chairman of the Board

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**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

The schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. Copies of these schedules will be provided to the Securities and Exchange Commission upon request. A list of those schedules appears below:

**Schedule**   **Description**

|            |   |
|------------|---|
| 1-A        | Restrictive Covenant Parties                |
| 1-B        | Key Consultants                             |
| 1.2(B)(6)  | Negative Customer Receivables               |
| 1.2(B)(12) | Other Excluded Assets                       |
| 2.2        | Funds Flow                                  |
| 2.3        | Required Consents                           |
| 3.2        | Excluded Payables                           |
| 4.1(B)     | No Violation                                |
| 4.1(D)     | Absence of Certain Transactions             |
| 4.1(E)(1)  | Contracts                                   |
| 4.1(E)(2)  | Defaults                                    |
| 4.1(E)(3)  | Approvals                                   |
| 4.1(E)(4)  | Absence of Certain Business Contracts       |
| 4.1(E)(5)  | Termination of Contracts                    |
| 4.1(F)     | Tangible Assets                             |
| 4.1(H)     | Intellectual Property                       |
| 4.1(H)(4)  | Proprietary Information Agreements          |
| 4.1(H)(6)  | Renewal of Registered Intellectual Property |
| 4.1(K)(1)  | Employee Plans                              |
| 4.1(K)(3)  | Employees                                   |
| 4.1(L)     | Suppliers                                   |
| 4.1(M)     | Insurance Policies                          |
| 4.1(O)     | Inventory                                   |
| 4.1(P)     | Customers                                   |
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| 4.1(S)     | Payables and Receivables                    |
| 4.1(T)     | Hazardous Materials                         |
| 4.1(U)(3)  | Warranties                                  |
| 4.1(V)(1)  | Taxes                                       |
| 5.14       | Distributors                                |
| 5.16       | Continuity of Operations                    |

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CREDIT AGREEMENT

dated as of  
June 22, 2020

among

LEMAITRE VASCULAR, INC.,

*as Borrower,*

THE LENDING INSTITUTIONS NAMED HEREIN,

*as Lenders,*

*and*

KEYBANK NATIONAL ASSOCIATION,

*as an LC Issuer, Swing Line Lender and as the Administrative Agent,*

---

KeyBanc Capital Markets Inc.

*and*

SUNTRUST ROBINSON HUMPHREY, INC.,

*each as a Joint Lead Arranger and a Joint Bookrunner*

\$65,000,000 Senior Secured Credit Facility

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- Exhibit A-2 Form of Swing Line Note
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- Exhibit B-1 Form of Notice of Borrowing
- Exhibit B-2 Form of Notice of Continuation or Conversion
- Exhibit B-3 Form of LC Request
- Exhibit C Form of Guaranty
- Exhibit D Form of Solvency Certificate
- Exhibit E Form of Compliance Certificate
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- Exhibit G Form of Assignment Agreement
- Exhibit K Form of Intercompany Subordination Agreement
- Exhibit L-1 Form of U.S. Tax Compliance Certificate
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Schedule 5.22 Capitalization  
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Schedule 6.16 Post-Closing Obligations  
Schedule 7.02 Dispositions  
Schedule 7.03 Liens  
Schedule 7.04 Indebtedness  
Schedule 7.05 Investments

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This CREDIT AGREEMENT is entered into as of June 22, 2020 among LeMaitre Vascular Inc., a Delaware corporation, as the borrower (the “Borrower”), the lenders from time to time party hereto (each a “Lender” and collectively, the “Lenders”), and KeyBank National Association, as the administrative agent (in such capacity, the “Administrative Agent”).

#### PRELIMINARY STATEMENTS:

(1) Pursuant to the Asset Purchase Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with Section 7.11, the “Closing Date Acquisition Agreement”), by and among the Borrower, Artegraft, Inc., a Delaware corporation (the “Seller”), the Borrower will, simultaneously with the making of the initial Loans (as hereinafter defined) hereunder, acquire substantially all of the assets (“Target Assets”) of the Seller (the “Closing Date Acquisition”).

(2) The Borrower has requested that the Lenders, the Swing Line Lender and each LC Issuer extend credit to the Borrower to (a) finance the Closing Date Acquisition, (b) repay the obligations under the Existing Credit Agreement (as hereinafter defined), and (c) provide working capital and funds for other general corporate purposes.

(3) Subject to and upon the terms and conditions set forth herein, the Lenders, the Swing Line Lender and each LC Issuer are willing to extend credit and make available to the Borrower the credit facilities provided for herein for the foregoing purposes.

#### AGREEMENT:

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

#### ARTICLE I.

##### DEFINITIONS AND TERMS

Section 1.01 Certain Defined Terms. As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires:

“1934 Act” means the Securities Exchange Act of 1934, as amended.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (i) the acquisition of all or substantially all of the assets of any Person, or any business or division of any Person, (ii) the acquisition or ownership of in excess of 50% of the Equity Interests of any Person, or (iii) the acquisition of another Person by a merger, consolidation, amalgamation or any other combination with such Person.

“Additional Security Documents” has the meaning provided in Section 6.10(a).

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**Adjusted Eurodollar Rate** means for any Interest Period with respect to a Eurodollar Loan, the greater of (a) 1.00% and (b) (i) the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published by Reuters or Bloomberg (or such other commercially available source providing such quotations as may be reasonably designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period divided (and rounded to the nearest 1/16th of 1%) by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith and in accordance with the provisions of this Agreement, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied as otherwise reasonably determined by the Administrative Agent.

**Administrative Agent** has the meaning provided in the first paragraph of this Agreement and includes any successor to the Administrative Agent appointed pursuant to Section 9.11.

**Administrative Agent Fee Letter** means the Administrative Agent Fee Letter, dated as of June 15, 2020, between the Borrower and the Administrative Agent.

**Affected Financial Institution** means (i) any EEA Financial Institution or (ii) any UK Financial Institution.

**Affiliate** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person, or, in the case of any Lender that is an investment fund, the investment advisor thereof and any investment fund having the same investment advisor. A Person shall be deemed to control a second Person if such first Person possesses, directly or indirectly, the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors or managers of such second Person or (ii) to direct or cause the direction of the management and policies of such second Person, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall in any event be considered an Affiliate of the Borrower or any of its Subsidiaries.

**Aggregate Credit Facility Exposure** means, at any time, the sum of (i) the Aggregate Revolving Facility Exposure at such time, (ii) the principal amount of Swing Loans outstanding at such time, and (iii) the aggregate principal amount of the Term Loans outstanding at such time.

**Aggregate Revolving Facility Exposure** means, at any time, the sum of (i) the aggregate principal amount of all Revolving Loans made by all Lenders and outstanding at such time and (ii) the aggregate amount of the LC Outstandings at such time.

**Agreement** means this Credit Agreement, including any exhibits or schedules, as the same may from time to time be amended, restated, amended and restated, supplemented or otherwise modified.

**Anti-Corruption Laws** means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any Subsidiary from time to time concerning or relating to bribery or corruption.

**Anti-Terrorism Law** means the USA Patriot Act or any other law pertaining to the prevention of future acts of terrorism, in each case as such law may be amended from time to time.

**“Applicable Lending Office”** means, with respect to each Lender, the office designated by such Lender to the Administrative Agent as such Lender’s lending office for all purposes of this Agreement. A Lender may have a different Applicable Lending Office for Base Rate Loans and Eurodollar Loans.

**“Applicable Margin”** means:

(i) On the Closing Date and thereafter, until changed in accordance with the following provisions, the Applicable Margin shall be (A) 150 basis points for Loans that are Base Rate Loans, (B) 250 basis points for Loans that are Eurodollar Loans and (C) 30 basis points for the Commitment Fee;

(ii) Commencing with the fiscal quarter of the Borrower ended on September 30, 2020, and continuing with each fiscal quarter thereafter, the Administrative Agent shall determine the Applicable Margin and the Commitment Fee in accordance with the following matrix, based on the Consolidated Leverage Ratio:

| <b>Consolidated Leverage Ratio</b>                               | <b>Applicable Margin for Base Rate Loans</b> | <b>Applicable Margin for Eurodollar Loans</b> | <b>Unused Commitment Fee</b> |
|--|--|---|------------------------------|
| Greater than or equal to 2.50 to 1.00                            | 175 bps                                      | 275 bps                                       | 35 bps                       |
| Greater than or equal to 1.50 to 1.00 but less than 2.50 to 1.00 | 150 bps                                      | 250 bps                                       | 30 bps                       |
| Less than 1.50 to 1.00   | 125 bps                                      | 225 bps                                       | 25 bps                       |

(iii) Changes in the Applicable Margin and the Commitment Fee based upon changes in the Consolidated Leverage Ratio shall become effective on the third Business Day following the receipt by the Administrative Agent pursuant to Section 6.01(a) or Section 6.01(b), as the case may be, of the financial statements of the Borrower for the Testing Period most recently ended, accompanied by a Compliance Certificate in accordance with Section 6.01(c), demonstrating the computation of the Consolidated Leverage Ratio. Notwithstanding the foregoing provisions, during any period when (A) the Borrower has failed to timely deliver its consolidated financial statements referred to in Section 6.01(a) or Section 6.01(b), as applicable, accompanied by a Compliance Certificate in accordance with Section 6.01(c), or (B) an Event of Default has occurred and is continuing, the Applicable Margin and the Commitment Fee shall be the highest number of basis points indicated therefor in the above matrix, regardless of the Consolidated Leverage Ratio at such time. The above matrix does not modify or waive, in any respect, the rights of the Administrative Agent and the Lenders to charge any default rate of interest or any of the other rights and remedies of the Administrative Agent and the Lenders hereunder.

(iv) In the event that any financial statement or certificate, as applicable, delivered pursuant to Section 6.01(a), (b) or (c) is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of (A) a higher Applicable Margin or Commitment Fee for any period (any such period, an “Applicable Period”) than the Applicable Margin and the Commitment Fee actually applied for such Applicable Period, then (i) the Borrower shall immediately deliver to the Administrative Agent a corrected certificate for such Applicable Period, (ii) the Applicable Margin and the Commitment Fee shall be determined as if such corrected, higher Applicable Margin and Commitment Fee were applicable for such period, and (iii) the Borrower shall immediately pay to the Administrative Agent the accrued additional interest owing as a result of such higher Applicable Margin and Commitment Fee for such Applicable Period.

**“Applicable Period”** has the meaning provided to such term in subpart (iv) of the definition of “Applicable Margin.”

**“Approved Bank”** has the meaning provided in subpart (ii) of the definition of “Cash Equivalents.”

**“Approved Fund”** means a fund that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit and that is administered or managed by a Lender or an Affiliate of a Lender or its investment advisor. With respect to any Lender, an Approved Fund shall also include any swap, special purpose vehicle purchasing or acquiring security interests in collateralized loan obligations or any other vehicle through which such Lender may leverage its investments from time to time.

**“Arrangers”** means KeyBanc Capital Markets Inc. and SunTrust Robinson Humphrey, Inc., each in their capacity as joint lead arranger and joint bookrunner.

**“Asset Sale”** means, with respect to any Person, the sale, lease, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, statutory divisions, amalgamations and liquidations of a corporation, partnership or limited liability company of the interests therein of such Person) by such Person to any other Person of any of such Person’s assets, *provided* that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete, worn-out or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any disposition or series of related dispositions that yield gross proceeds of less than \$250,000.

**“Assignment Agreement”** means an Assignment Agreement substantially in the form of Exhibit G hereto or such other agreement acceptable to the Administrative Agent.

**“Authorized Officer”** means, with respect to any Person, any of the following officers: the President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer, the Assistant Treasurer or the Controller, or such other officer of such Person as is authorized in writing to act on behalf of such Person and is acceptable to the Administrative Agent. Unless otherwise qualified, all references herein to an Authorized Officer shall refer to an Authorized Officer of the Borrower.

**“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 (i) 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 (ii) 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).

**“Banking Services Obligations”** means all obligations of the Credit Parties, whether absolute or contingent, and howsoever and whensoever created, arising, evidenced or acquired in connection with the provision of commercial credit cards, stored value cards, or treasury management services (including controlled disbursement automated clearinghouse transactions, return items, overdrafts, netting and interstate depository network services) by any Lender (or any Affiliate of a Lender) to any Credit Party or any Person that was a Lender (or an Affiliate of a Lender) at the time such obligation was created.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto, as hereafter amended.

**“Base Rate”** means, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the rate of interest in effect for such day as established from time to time by KeyBank National Association as its “prime rate”, whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit, (iii) the Adjusted Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00% and (iv) 2.00%.

**“Base Rate Loan”** means any Loan bearing interest at a rate based upon the Base Rate in effect from time to time.

**“Benchmark Replacement”** means the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by 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 or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the Adjusted Eurodollar Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, 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 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 LIBOR with the applicable Unadjusted Benchmark Replacement by 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. 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 the Adjusted Eurodollar Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

**“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 “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative 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 the 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).

**Benchmark Replacement Date** means the earlier to occur of the following events with respect to the Adjusted Eurodollar Rate: (a) in the case of clause (1) or (2) 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 LIBOR permanently or indefinitely ceases to provide LIBOR; or (b) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

**Benchmark Transition Event** means the occurrence of one or more of the following events with respect to the Adjusted Eurodollar Rate: (1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

**Benchmark Transition Start Date** means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

**Benchmark Unavailability Period** means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that the Adjusted Eurodollar Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Adjusted Eurodollar Rate for all purposes hereunder in accordance Section 2.09(h) and (y) ending at the time that a Benchmark Replacement has replaced the Adjusted Eurodollar Rate for all purposes hereunder pursuant to Section 2.09(h).

**Beneficial Owner** means (i) each individual, if any, who, directly or indirectly, owns 25% or more of the Borrower’s Equity Interests and (ii) a single individual with significant responsibility to control, manage or direct the Borrower.

**Benefited Creditors** means, with respect to the Borrower Guaranteed Obligations pursuant to Article X, each of the Administrative Agent, the Lenders, each LC Issuer and the Swing Line Lender and each Designated Hedge Creditor, and the respective successors and assigns of each of the foregoing.

**Borrower** has the meaning provided in the first paragraph of this Agreement.

**Borrower Guaranteed Obligations** has the meaning provided in Section 10.01.

**Borrowing** means a Revolving Borrowing, a Term Borrowing or the incurrence of a Swing Loan.

**“Business Day”** means (i) any day other than Saturday, Sunday or any other day on which commercial banks in Cleveland, Ohio or New York, New York are authorized or required by law to close and (ii) with respect to any matters relating to Eurodollar Loans, any day on which dealings in U.S. Dollars are carried on in the London interbank market.

**“Capital Distribution”** means, with respect to any Person, a payment made, liability incurred or other consideration given for the purchase, acquisition, repurchase, redemption or retirement of any Equity Interest of such Person or as a dividend, return of capital or other distribution in respect of any of such Person’s Equity Interests.

**“Capital Expenditures”** means, without duplication, (i) any expenditure or commitment to expend money for any purchase or other acquisition of any asset including capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of Borrower and its Subsidiaries prepared in accordance with GAAP, and (ii) Capitalized Lease Obligations and Synthetic Lease Obligations, but excluding (a) expenditures made in connection with the replacement, substitution or restoration of property pursuant to Section 2.13(c)(viii), (b) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time and (c) Permitted Acquisitions.

**“Capital Lease”** as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, should be accounted for as a capital lease on the balance sheet of that Person.

**“Capitalized Lease Obligations”** means, with respect to any Person, all obligations under Capital Leases of such Person, without duplication, in each case taken at the amount thereof accounted for as liabilities identified as “capital lease obligations” (or any similar words) on a consolidated balance sheet of such Person prepared in accordance with GAAP.

**“Cash Collateralize”** means, (i) to deposit into a cash collateral account maintained with (or on behalf of) the Administrative Agent, and under the sole dominion and control of the Administrative Agent, or (ii) to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the LC Issuers or Lenders, as collateral for LC Outstandings or obligations of Lenders to fund participations in respect of LC Outstandings, cash or deposit account balances in each case, in an amount equal to 105% of such obligations or, if the Administrative Agent and each applicable LC Issuer shall agree in their sole discretion, other credit support; in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and each applicable LC Issuer. **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Dividend”** means a Capital Distribution by a Person payable in cash to the holders of Equity Interests of such Person with respect to any class or series of Equity Interest of such Person.

**“Cash Equivalents”** means any of the following:

(i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition;

(ii) U.S. dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any Lender, (y) any commercial bank of recognized standing organized under the laws of the United States (or any state thereof or the District of Columbia) and having capital and surplus in excess of \$500,000,000 or (z) any commercial bank (or the parent company of such bank) of recognized standing organized under the laws of the United States (or any state thereof or the District of Columbia) and whose short-term commercial paper rating from S&P is at least A-1, A-2 or the equivalent thereof or from Moody's is at least P-1, P-2 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than 180 days from the date of acquisition;

(iii) commercial paper issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long-term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 180 days after the date of acquisition;

(iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;

(v) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) through (iv) above;

(vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;

(vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer, and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and

(viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"Cash Proceeds" means, with respect to (i) any Asset Sale, the aggregate cash payments (including any cash received by way of deferred payment pursuant to a note receivable issued in connection with such Asset Sale, other than the portion of such deferred payment constituting interest, but only as and when so received) received by the Borrower or any Subsidiary from such Asset Sale, (ii) any Event of Loss, the aggregate cash payments, including all insurance proceeds and proceeds of any award for condemnation or taking, received in connection with such Event of Loss and (iii) the issuance or incurrence of any Indebtedness, the aggregate cash proceeds received by the Borrower or any Subsidiary in connection with the issuance or incurrence of such Indebtedness.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. § 9601 *et seq.*

"CFC" means a Subsidiary that is a controlled foreign corporation under the Code.

"CFC Holdco" means any Subsidiary with no material operations and no material assets other than capital stock of and/or indebtedness incurred by one or more CFCs.

“Change in Control” means:

(i) any “person” or “group” (as those terms are used in Section 13(d)(3) of the 1934 Act, it being agreed that an employee of the Borrower or any of its Subsidiaries for whom shares are held under an employee stock ownership, employee retirement, employee savings or similar plan and whose shares are voted in accordance with the instructions of such employee shall not be a member of a “group” (as that term is used in Section 13(d)(3) of the 1934 Act) solely because such employee’s shares are held by a trustee under said plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the 1934 Act), directly or indirectly, of Equity Interests of the Borrower (or other securities convertible into such Equity Interests) representing 35% or more of the combined voting power of all Equity Interests of the Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of the Borrower;

(ii) except in connection with a transaction permitted by Section 7.05, the Borrower fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party (or if such Subsidiary becomes a Loan Party after the Closing Date, the amount owned and controlled, directly or indirectly, as of the date such Subsidiary becomes a Loan Party); or

(iii) the occurrence of any “Change in Control” (or any similar or like term) as defined in any indenture, agreement, note or similar document governing or evidencing Material Indebtedness.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Charges” has the meaning provided in Section 11.23.

“CIP Regulations” has the meaning provided in Section 9.07.

“Claims” has the meaning set forth in the definition of “Environmental Claims.”

“Closing Certificate” means a certificate substantially in the form of Exhibit F attached hereto.

“Closing Date” means June 22, 2020.

“Closing Date Acquisition” has the meaning provided in the preliminary statements hereto.

“Closing Date Acquisition Agreement” has the meaning provided in the preliminary statements hereto.

“Closing Date Acquisition Documentation” means, collectively, the Closing Date Acquisition Agreement and all schedules, exhibits and annexes thereto and all side letters and agreements affecting the terms thereof or entered into in connection therewith, in each case, as amended, supplemented or otherwise modified from time to time in accordance with Section 7.11.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code as in effect at the Closing Date and any subsequent provisions of the Code, amendatory thereto or substituted therefor.

“Collateral” means the “Collateral” as defined in the Security Agreement, together with any other collateral (whether Real Property or personal property) covered by any Security Document.

“Collateral Assignment” means a collateral assignment agreement, in form and substance reasonably acceptable to the Administrative Agent, pursuant to which (i) on the Closing Date, the Borrower, among other things, collaterally assigns its rights and benefits under the Closing Date Acquisition Documentation to the Administrative Agent or (ii) in connection with any Permitted Acquisition, the applicable Credit Party, among other things, collaterally assigns its rights and benefits under the applicable documentation related to the Permitted Acquisition to the Administrative Agent.

“Commercial Letter of Credit” means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of materials, goods or services in the ordinary course of business.

“Commitment” means, with respect to each Lender, (i) its Revolving Commitment or (ii) its Term Commitment, if any, or, in the case of such Lender, all of such Commitments.

“Commitment Fees” has the meaning provided in Section 2.11(a).

“Commodities Hedge Agreement” means a commodities contract purchased by the Borrower or any of its Subsidiaries in the ordinary course of business, and not for speculative purposes, with respect to raw materials necessary to the manufacturing or production of goods in connection with the business of the Borrower and its Subsidiaries.

“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.

“Communications” has the meaning provided in Section 9.15(a).

“Compliance Certificate” has the meaning provided in Section 6.01(c).

“Confidential Information” has the meaning provided in Section 11.15(b).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consideration” means, in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees (excluding any fees payable to any investment banker or advisors in connection with such Acquisition) or fees for a covenant not to compete and any other consideration paid.

“Consolidated Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) made by the Borrower and its Subsidiaries to acquire or lease (pursuant to a Capital Lease) fixed or capital assets, or additions to equipment (including replacements, capitalized repairs and improvements during such period).

**"Consolidated Depreciation and Amortization Expense"** means, for any period, all depreciation and amortization expenses of the Borrower and its Subsidiaries (including impairments to goodwill), all as determined for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

**"Consolidated EBITDA"** means, for any period:

- (i) Consolidated Net Income for the most recently completed Testing Period, plus
- (ii) without duplication, the sum of the amounts for such period included in determining such Consolidated Net Income of:
  - (a) Consolidated Income Tax Expense,
  - (b) Consolidated Interest Expense,
  - (c) Consolidated Depreciation and Amortization Expense,
  - (d) actual fees, expenses and costs paid in cash and incurred on or prior to or within six months after the Closing Date relating to the Transactions in an amount not to exceed \$2,515,000 in the aggregate,
  - (e) [reserved],
  - (f) to the extent paid in cash, severance costs incurred in connection with the Closing Date Acquisition or any Permitted Acquisition, in each case, to the extent incurred within six months of the closing of such Acquisition,
  - (g) any other non-cash charges (excluding any such noncash charges to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period),
  - (h) non-recurring cash costs and expenses in an aggregate amount of up to \$1,000,000 in each calendar year, provided that such amounts added back under this clause (h), together with any add-backs pursuant to clauses (f) and (g), shall not exceed 20% of Consolidated EBITDA for the applicable Testing Period calculated prior to giving effect to the add-backs under clauses (f), (g) and (h),
    - (i) non-cash purchase accounting adjustments, and
    - (j) restructuring charges, inclusive of severance costs and distributor buyout costs, relating to the Closing Date Acquisition and incurred within the first six months after the Closing Date, less,
- (iii) without duplication, the sum of the amounts for such period included in determining such Consolidated Net Income of:
  - (a) interest income (except to the extent deducted in determining Consolidated Interest Expense),
  - (b) any unusual non-recurring non-cash gains, and
  - (c) any federal, state, local, and foreign income tax credits;

*provided, however, that Consolidated EBITDA for any Testing Period shall (y) include the EBITDA for any Person or business unit that has been acquired by the Borrower or any of its Subsidiaries for any portion of such Testing Period prior to the date of acquisition, so long as such EBITDA has been verified by appropriate audited financial statements or other financial statements reasonably acceptable to the Administrative Agent and (z) exclude the EBITDA for any Person or business unit that has been disposed of by the Borrower or any of its Subsidiaries, for the portion of such Testing Period prior to the date of disposition. For the purposes of this Agreement, Consolidated EBITDA shall be deemed to mean \$8,304,000 for the fiscal quarter ending June 30, 2019, \$7,748,000 for the fiscal quarter ending September 30, 2019, \$6,943,000 for the fiscal quarter ending December 31, 2019, \$6,706,000 for the fiscal quarter ending March 31, 2020, and for the fiscal quarter starting April 1, 2020 through the Closing Date, an amount calculated using the same methodology used in calculating each of the prior periods.*

**“Consolidated Fixed Charges”** means, for any period, as determined on a consolidated basis and in accordance with GAAP, without duplication, the aggregate of (i) Consolidated Interest Expense and (ii) scheduled principal payments on Indebtedness due in the twelve months preceding the measurement date (other than optional prepayments of the Revolving Loans and payments of Permitted Earnouts to the extent permitted hereunder).

**“Consolidated Income Tax Expense”** means, for any period, all provisions for taxes based on income, profits or capital of the Borrower and its Subsidiaries, including, without limitation, federal, state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations.

**“Consolidated Interest Expense”** means with respect to the Borrower and its Subsidiaries on a consolidated basis, for any Testing Period, interest expense in accordance with GAAP, adjusted, to the extent not included, to include without duplication (i) interest income, (ii) interest expense attributable to Capitalized Leases, (iii) gains and losses on hedging or other derivatives to hedge interest rate risk, (iv) fees and costs related to letters of credit, bankers' acceptance financing, surety bonds and similar financings, (v) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude (vi) any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program.

**“Consolidated Leverage Ratio”** means, for any Testing Period, the ratio of (i) Consolidated Total Debt to (ii) Consolidated EBITDA.

**“Consolidated Net Income”** means for any period, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

**“Consolidated Net Working Capital”** means current assets (excluding cash and Cash Equivalents), minus current liabilities, all as determined for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

**“Consolidated Total Debt”** means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of the Borrower and its Subsidiaries of the type described in clauses (i) through (vii), clause (ix) and clause (xii) of the definition of the term “Indebtedness” (or, if higher, the par value or stated face amount of all such Indebtedness), and with respect to any Indebtedness of the type described by the foregoing, (without duplication) any guarantee of such type of Indebtedness, determined on a consolidated basis as of such date in accordance with GAAP.

“Continue,” “Continuation” and “Continued” each refers to a continuation of a Eurodollar Loan for an additional Interest Period as provided in Section 2.10.

“Control Agreements” has the meaning set forth in the Security Agreement.

“Convert,” “Conversion” and “Converted” each refers to a conversion of Loans of one Type into Loans of another Type.

“Credit Event” means the making of any Borrowing, any Conversion or Continuation or any LC Issuance.

“Credit Facility” means the credit facility established under this Agreement pursuant to which (i) the Lenders shall make Revolving Loans to the Borrower, and shall participate in LC Issuances, under the Revolving Facility pursuant to the Revolving Commitment of each such Lender, (ii) each Lender with a Term Commitment shall make a Term Loan to the Borrower pursuant to such Term Commitment of such Lender, (iii) the Swing Line Lender shall make Swing Loans to the Borrower under the Swing Line Facility pursuant to the Swing Line Commitment, and (iv) each LC Issuer shall issue Letters of Credit for the account of the LC Obligors in accordance with the terms of this Agreement.

“Credit Facility Exposure” means, for any Lender at any time, the sum of (i) such Lender’s Revolving Facility Exposure at such time, (ii) in the case of the Swing Line Lender, the principal amount of Swing Loans outstanding at such time, and (iii) the outstanding aggregate principal amount of the Term Loan made by such Lender, if any.

“Credit Party” means the Borrower or any Guarantor.

“Crossover Lender” means each holder of any Subordinated Indebtedness or any of such holder’s Affiliates.

“Debtor Relief Laws” means the Bankruptcy Code and any other federal, state, provincial, or foreign bankruptcy or insolvency law, each as now and hereinafter in effect, any successors to such statutes, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), judicial management, administration, examinership or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and any law permitting a debtor to obtain a stay or a compromise of the claims of its creditors (including any applicable corporate law relating to arrangements, reorganizations or restructuring which permits a debtor to seek a compromise or arrangement of a corporation’s debts or a stay of proceedings to enforce any claims of such corporation’s creditors against it).

“Default” means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

**“Defaulting Lender”** means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any LC Issuer, any Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any LC Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, in each case, which is still in effect or (iii) 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 judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) upon delivery of written notice of such determination to the Borrower, each LC Issuer, each Swing Line Lender and each Lender.

**“Default Rate”** means, for any day, (i) with respect to any Loan, a rate per annum equal to 2% per annum above the interest rate that is or would be applicable from time to time to such Loan pursuant to Section 2.09(a) or Section 2.09(b), as applicable and (ii) with respect to any other amount, a rate per annum equal to 2% per annum above the rate that would be applicable to Revolving Loans that are Base Rate Loans pursuant to Section 2.09(a).

**“Designated Hedge Agreement”** means any Hedge Agreement (other than a Commodities Hedge Agreement) to which the Borrower or any of its Subsidiaries is a party and as to which a Lender or any of its Affiliates (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of such Hedge Agreement) is a counterparty that, pursuant to a written instrument signed by the Administrative Agent, has been designated as a Designated Hedge Agreement so that the Borrower’s or such Subsidiary’s counterparty’s credit exposure thereunder will be entitled to share in the benefits of the Guaranty and the Security Documents to the extent the Guaranty and such Security Documents provide guarantees or security for creditors of the Borrower or any Subsidiary under Designated Hedge Agreements.

**“Designated Hedge Creditor”** means each Secured Hedge Provider that participates as a counterparty to any Credit Party pursuant to any Designated Hedge Agreement with such Secured Hedge Provider.

**“Disqualified Equity Interests”** means any Equity Interest that (a) by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Term Loan Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or other Indebtedness or (ii) any Equity Interest referred to in clause (a) above, in each case at any time on or prior to the first anniversary of the Term Loan Maturity Date, (c) contains any repurchase obligation that may come into effect prior to payment in full of all Obligations, (d) requires cash dividend payments prior to one year after the Term Loan Maturity Date, (e) does not provide that any claims of any holder of such Equity Interest may have against the Borrower or any other Credit Party (including any claims as judgment creditor or other creditor in respect of claims for the breach of any covenant contained therein) shall be fully subordinated (including a full remedy bar) to the Obligations in a manner reasonably satisfactory to the Administrative Agent, or (f) provides the holders of such Equity Interests with any rights to receive any cash upon the occurrence of a change of control prior to the first anniversary date on which the Obligations have been irrevocably paid in full, unless the rights to receive such cash are contingent upon the Obligations being irrevocably paid in full.

“Dollars,” “U.S. Dollars” and the sign “\$” each means lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any State thereof, or the District of Columbia.

“Early Opt-in Election” means the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.09(h), are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Adjusted Eurodollar Rate, and

(2) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

“EBITDA” means, with respect to any Person for any period, the net income for such Person for such period plus the sum of the amounts for such period included in determining such net income in respect of (i) interest expense, (ii) income tax expense, and (iii) depreciation and amortization expense, in each case as determined in accordance with GAAP.

“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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

**“Eligible Assignee”** means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund, and (iv) any other Person (other than a natural Person) approved by (A) the Administrative Agent, (B) each LC Issuer, and (C) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed (and the Borrower shall be deemed to have consented if it fails to object to any assignment within five Business Days after it received written notice thereof)); *provided, however,* no such approval of the Administrative Agent or the Borrower shall be required in connection with assignments to (x) with respect to the Term Facility, any Lender under the Credit Facility or any Affiliate thereof or (y) with respect to any Revolving Lender, any other Revolving Lender or any Affiliate of a Revolving Lender; and, *provided further*, that notwithstanding the foregoing, **“Eligible Assignee”** shall not include (x) the Borrower or any of the Borrower’s Affiliates or Subsidiaries, (y) any holder of any Subordinated Indebtedness or any of such holder’s Affiliates, or (z) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (z).

**“Eligible Participant”** means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund, (iv) any commercial bank (or the parent company of such bank), insurance company or any company engaged in the business of making commercial loans and (v) any other Person (other than a natural Person) approved by (A) the Administrative Agent, (B) each LC Issuer, (C) each Swing Line Lender and (D) unless a Default or Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed (and the Borrower shall be deemed to have consented thereto if it fails to object to any participation within five Business Days after it received written notice thereof)); *provided, however,* that notwithstanding the foregoing, **“Eligible Participant”** shall not include (x) the Borrower or any of the Borrower’s Affiliates or Subsidiaries, (y) any holder of any Subordinated Indebtedness or any of such holder’s Affiliates or (z) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (z).

**“Environmental Claims”** means any and all global, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter **“Claims”**), including, without limitation, (i) any and all Claims by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

**“Environmental Law”** means any applicable Federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or global interpretation thereof, including any judicial or global order, consent, decree or judgment issued to or rendered against the Borrower or any of its Subsidiaries relating to the protection of the environment or employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 *et seq.*, the Hazardous Material Transportation Act, 49 U.S.C. § 5101 *et seq.* and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.* (to the extent it regulates occupational exposure to Hazardous Materials); and any state, provincial and local or foreign counterparts or equivalents, in each case as amended from time to time.

**Environmental Liabilities and Costs** means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Environmental Claim which relate to any environmental condition or a release, use, handling, storage or treatment of Hazardous Materials by any Credit Party or a predecessor in interest from or on to (i) any property presently or formerly owned by any Credit Party or (ii) any facility which received Hazardous Materials generated by any Credit Party.

**Equity Interest** means with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting) of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) or 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, such partnership, but in no event will Equity Interest include any debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the Closing Date and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

**ERISA Affiliate** means each Person (as defined in Section 3(9) of ERISA), which together with the Borrower or a Subsidiary of the Borrower, would be deemed to be a “single employer” (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(a)(14) or 4001(b)(i) of ERISA or (ii) as a result of the Borrower or a Subsidiary of the Borrower being or having been a general partner of such Person.

**ERISA Event** means: (i) that a Reportable Event has occurred with respect to any Plan; (ii) the institution of any steps by the Borrower or any Subsidiary, any ERISA Affiliate, the PBGC or any other Person to terminate any Plan or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan; (iii) the institution of any steps by the Borrower or any Subsidiary or any ERISA Affiliate to withdraw from any Multi-Employer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA or in Section 4063 of ERISA) in excess of \$5,000,000; (iv) a non-exempt “prohibited transaction” within the meaning of Section 406 of ERISA in connection with any Plan; (v) that a Plan has Unfunded Benefit Liabilities exceeding \$5,000,000; (vi) the cessation of operations at a facility of the Borrower or any Subsidiary or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (vii) the conditions for imposition of a Lien under Section 303(a) of ERISA shall have been met with respect to a Plan; (viii) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 206(g) of ERISA; (ix) the insolvency of or commencement of reorganization proceedings with respect to a Multi-Employer Plan; (x) any material increase in the contingent liability of the Borrower or any Subsidiary with respect to any post-retirement welfare liability; or (xi) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.

**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 Loan** means each Loan bearing interest at a rate based upon the Adjusted Eurodollar Rate.

**Event of Default** has the meaning provided in Section 8.01.

**“Event of Loss”** means, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever, (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property, or (iv) in the case of any property located upon a leasehold, the termination or expiration of such leasehold.

**“Excess Cash Flow”** means, for any Testing Period, the excess of:

(i) the sum, for such Testing Period without duplication, of:

- (a) Consolidated Net Income,
- (b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income,
- (c) decreases in Consolidated Net Working Capital, and
- (d) cash income or gain (actually received in cash) excluded from the calculation of Consolidated Net Income pursuant to the definition thereof, *less*

(ii) the sum for such Testing Period without duplication of:

- (a) an amount equal to the amount of all non-cash credits or gains included in arriving at such Consolidated Net Income,
- (b) Consolidated Capital Expenditures to the extent that such Capital Expenditures were financed with Internally Generated Cash,
- (c) the increase, if any, in Consolidated Net Working Capital,
- (d) to the extent financed with Internally Generated Cash and permitted to be paid hereunder, scheduled or mandatory repayments, prepayments or redemptions of the principal of Indebtedness (and, as in the case of any revolving credit facility, so long as there is a permanent reduction in the commitment thereunder),
- (e) scheduled payments representing the principal portion of Capitalized Leases,
- (f) Restricted Payments made by the Borrower or any of its Subsidiaries, in each case, to the extent such Restricted Payment was permitted hereunder,
- (g) the amount of consideration paid in connection with a Permitted Acquisition in cash during such period to the extent that such consideration was financed with Internally Generated Cash,
- (h) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash, cash payments made in respect of Permitted Earnouts,
- (i) the amount of cash taxes (including penalties and interest or tax reserves) paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

(j) cash expenditures for costs and expenses in connection with dispositions and the issuance of equity interests or Indebtedness, in each case, to the extent such transaction is permitted hereunder and to the extent not deducted in Consolidated Net Income.

“Excess Cash Flow Prepayment Amount” has the meaning provided in Section 2.13(c)(iv).

“Excluded Subsidiary.” means (i) any Subsidiary not wholly-owned, directly or indirectly, by the Borrower to the extent (but only so long as) it is prohibited by the terms of any contractual obligation (including pursuant to any Organizational Documents of such Subsidiary) from guaranteeing the Obligations or any other obligations or liabilities guaranteed pursuant to the terms of the Security Agreement; provided, that such contractual obligation is not and was not created in contemplation of this definition, (ii) any Subsidiary that is prohibited or restricted by applicable law, rule or regulation or from guaranteeing the Obligations or which would require consent, approval, license or authorization from any Governmental Authority to provide a guarantee unless such consent, approval, license or authorization has been received, after giving effect to the anti-assignment provision of the UCC and other applicable law, (iii) any CFC, (iv) any CFC Holdco, (v) any Subsidiary whose Equity Interests are owned directly or indirectly by a CFC or CFC Holdco, (vi) captive insurance companies, and (vii) not-for-profit Subsidiaries.

“Excluded Swap Obligation” means, with respect to the Borrower or any Guarantor, (x) as it relates to all or a portion of the guaranty of such Guarantor or the Borrower, any Swap Obligation if, and to the extent that, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s or the Borrower’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 or the Borrower becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor or the Borrower of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s or the Borrower’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 or the Borrower becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“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 net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.05) or (ii) such Lender changes its Applicable Lending Office, except in each case to the extent that, pursuant to Section 3.03, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Applicable Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.03(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Commercial Loan Agreement, dated April 30, 2012, between First Bank and the Seller, as amended.

“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 applicable intergovernmental agreements with respect thereto (including any applicable law implementing such agreements) and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

“Fee Letter” means the Fee Letter, dated as of June 15, 2020, between the Borrower and the Administrative Agent, for the benefit of the Lenders.

“Fees” means all amounts payable pursuant to, or referred to in, Section 2.11.

“Financial Officer” means the chief executive officer, the president or the chief financial officer of the Borrower.

“Financial Projections” has the meaning provided in Section 5.07(b).

“Fixed Charge Coverage Ratio” means, for any Testing Period, the ratio of (i) Consolidated EBITDA *less* Consolidated Capital Expenditures that are not financed by term loans or capital leases with initial maturities in excess of 365 days *less* Capital Distributions made by the Borrower in respect of its common stock, to (ii) Consolidated Fixed Charges.

“Flood Hazard Property” means any Real Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any LC Issuer, such Defaulting Lender’s Revolving Facility Percentage of LC Outstandings with respect to Letters of Credit issued by such LC Issuer other than LC Outstandings as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to any Swing Line Lender, such Defaulting Lender’s Revolving Facility Percentage of outstanding Swing Loans made by such Swing Line Lender other than Swing Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“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 of America 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 any supra-national bodies such as the European Union or the European Central Bank).

**“Granting Lender”** has the meaning provided in Section 11.06(f).

**“Guarantors”** means any Subsidiary that is or hereafter becomes a party to the Guaranty. Schedule 2 hereto lists each Guarantor as of the Closing Date.

**“Guaranty”** means a Guaranty of Payment, substantially in the form attached hereto as Exhibit C.

**“Guaranty Obligations”** means as to any Person (without duplication) any obligation of such Person guaranteeing any Indebtedness (“primary Indebtedness”) 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 Indebtedness or any property constituting direct or indirect security therefore; (ii) to advance or supply funds for the purchase or payment of any such primary Indebtedness or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary Indebtedness of the ability of the primary obligor to make payment of such primary Indebtedness; or (iv) otherwise to assure or hold harmless the owner of such primary Indebtedness against loss in respect thereof; *provided, however,* that the definition of Guaranty Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary Indebtedness in respect of which such Guaranty Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder).

**“Hazardous Materials”** means (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “restricted hazardous materials,” “extremely hazardous wastes,” “restrictive hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar meaning and regulatory effect, under any applicable Environmental Law.

**“Hedge Agreement”** means (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar interest rate management agreement or arrangement, (ii) any currency swap or option agreement, foreign exchange contract, forward currency purchase agreement or similar currency management agreement or arrangement or (iii) any Commodities Hedge Agreement.

**“Hedging Obligations”** means all obligations of any Credit Party under and in respect of (i) any Hedge Agreements entered into with any Secured Hedge Provider or (ii) any Designated Hedge Agreement.

**“Immaterial Subsidiary”** means, on any date, any Subsidiary of the Borrower (a) that has been designated as such pursuant to a written notice delivered by the Borrower to the Administrative Agent (or identified in this definition) and (b) that did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been delivered to the Administrative Agent pursuant to Section 6.01(b), have individually or in the aggregate with all other Immaterial Subsidiaries, assets with a value in excess of \$5,000,000 or revenues in an amount in excess of 5,000,000; *provided, however,* that no Subsidiary shall be deemed or designated an Immaterial Subsidiary if such Subsidiary guarantees any Material Indebtedness of the Borrower or any other Credit Party.

**“Incremental Revolving Credit Assumption Agreement”** means an Incremental Revolving Credit Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Revolving Credit Lenders.

**“Incremental Revolving Credit Commitment”** means the commitment of any Lender, established pursuant to Section 2.17, to make Incremental Revolving Loans to the Borrower.

**“Incremental Revolving Credit Lender”** means a Lender with an Incremental Revolving Credit Commitment or an outstanding Incremental Revolving Loan.

**“Incremental Revolving Loans”** means Revolving Loans made by one or more Lenders to the Borrower pursuant to Section 2.17. Incremental Revolving Loans shall be made in the form of additional Revolving Loans.

**“Incremental Term Lender”** means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

**“Incremental Term Loan Assumption Agreement”** means an Incremental Term Loan Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Term Lenders.

**“Incremental Term Loan Commitment”** means the commitment of any Lender, established pursuant to Section 2.17, to make Incremental Term Loans to the Borrower.

**“Incremental Term Loan Maturity Date”** means the final maturity date of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

**“Incremental Term Loan Repayment Dates”** means the dates scheduled for the repayment of principal of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

**“Incremental Term Loans”** means Term Loans made by one or more Lenders to the Borrower pursuant to Section 2.17, Incremental Term Loans may be made in the form of additional Term Loans or, to the extent permitted by Section 2.17 and provided for in the relevant Incremental Term Loan Assumption Agreement, Other Term Loans.

**“Indebtedness”** of any Person means without duplication:

- (i) all indebtedness of such Person for borrowed money;
- (ii) all indebtedness evidenced by bonds, notes, debentures, loan agreements and similar debt securities of such Person;
- (iii) the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person;

- (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder;
- (v) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, surety bonds, performance bonds, and similar instruments issued or created by or for the account of such person;
- (vi) all indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such indebtedness has been assumed;
- (vii) all Capitalized Lease Obligations and Purchase Money Indebtedness of such Person;
- (viii) the present value, determined on the basis of the implicit interest rate, of all basic rental obligations under all Synthetic Leases of such Person;
- (ix) all obligations of such Person with respect to asset securitization financing;
- (x) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, *i.e.*, take-or-pay and similar obligations, in each case that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person;
- (xi) all net obligations of such Person under Hedge Agreements;
- (xii) all Disqualified Equity Interests of such Person;
- (xiii) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sold with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; and
- (xiv) all Guaranty Obligations of such Person;

*provided, however,* that (y) neither trade payables, deferred revenue, taxes nor other similar accrued or deferred expenses, in each case arising in the ordinary course of business and, to the extent applicable, paid in a manner consistent with past practice, shall constitute Indebtedness; and (z) the Indebtedness of any Person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such Person is a general partner) to the extent such Person is liable thereon as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide expressly that such Person is not liable thereon.

**"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 Credit Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**"Indemnitees"** has the meaning provided in **Section 11.02**.

**"Initial Term Loan Maturity Date"** means June 22, 2025.

"Insolvency Event" means, with respect to any Person:

- (i) the commencement of a voluntary case by such Person under the Bankruptcy Code or the seeking of relief by such Person under any Debtor Relief Law or analogous law in any jurisdiction outside of the United States;
- (ii) the commencement of an involuntary case against such Person under the Bankruptcy Code, any Debtor Relief Law or analogous law in any jurisdiction outside of the United States and the petition is not controverted within 10 days, or is not dismissed within 45 days, after commencement of the case;
- (iii) a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of such Person;
- (iv) such Person commences (including by way of applying for or consenting to the appointment of, or the taking of possession by, a rehabilitator, receiver, administrative receiver, receiver-manager, administrator, judicial manager, compulsory manager, custodian, trustee, monitor, conservator or liquidator (collectively, a "conservator") of such Person or all or any substantial portion of its property) any other proceeding under any Debtor Relief Law or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;
- (v) any such proceeding of the type set forth in clause (iv) above is commenced against such Person to the extent such proceeding is consented to by such Person or remains undismissed for a period of 45 days;
- (vi) such Person is adjudicated insolvent or bankrupt, or is deemed to, or is declared to, be unable to pay its debts under applicable law;
- (vii) any order of relief or other order approving any such case or proceeding is entered;
- (viii) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of 45 days;
- (ix) such Person makes a general assignment for the benefit of creditors or generally does not pay its debts as such debts become due; or
- (x) any corporate (or similar organizational) action is taken by such Person for the purpose of effecting any of the foregoing.

"Intellectual Property" has the meaning provided in the Security Agreement.

"Intercompany Subordination Agreement" means the Intercompany Subordination Agreement in substantially the form of Exhibit K hereto.

"Interest Period" means, with respect to each Eurodollar Loan, a period of one, two, three or six months as selected by the Borrower; *provided, however,* that (i) the initial Interest Period for any Borrowing of such Eurodollar Loan shall commence on the date of such Borrowing (the date of a Borrowing resulting from a Conversion or Continuation shall be the date of such Conversion or Continuation) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires; (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; (iii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; *provided, however,* that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) no Interest Period for any Eurodollar Loan may be selected that would end after the Revolving Facility Termination Date or the latest Term Loan Maturity Date, as the case may be; and (v) if, upon the expiration of any Interest Period, the Borrower has failed to (or may not) elect a new Interest Period to be applicable to the respective Borrowing of Eurodollar Loans as provided above, the Borrower shall be deemed to have elected to Convert such Borrowing to Base Rate Loans effective as of the expiration date of such current Interest Period.

**“Internally Generated Cash”** means, with respect to any Person, funds of such Person and its Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) equity interests of such Person, (y) proceeds of the incurrence of Indebtedness by such Person or any of its Subsidiaries (other than under any revolving credit facility or line of credit) or (z) proceeds of Asset Sales (other than Asset Sales in the ordinary course of business) and casualty events.

**“Investment”** means: (i) any direct or indirect purchase or other acquisition by a Person of any Equity Interest of any other Person; (ii) any loan, advance (other than deposits with financial institutions available for withdrawal on demand), capital contribution or extension of credit to, guarantee or assumption of debt or purchase or other acquisition of any other Indebtedness of, any Person by any other Person; (iii) the purchase, acquisition or investment of or in any stocks, bonds, mutual funds, notes, debentures or other securities, or any deposit account, certificate of deposit or other investment of any kind; or (iv) any statutory division.

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

**“Landlord’s Agreement”** means a landlord’s waiver, mortgagee’s waiver or bailee’s waiver, each in form and substance reasonably satisfactory to the Administrative Agent, and providing, among other things, for waiver of Lien, certain notices and opportunity to cure and access to Collateral, delivered by a Credit Party in connection with this Agreement, as the same may from time to time be amended, restated or otherwise modified.

**“LC Commitment Amount”** means \$5,000,000.

**“LC Documents”** means, with respect to any Letter of Credit, any documents executed in connection with such Letter of Credit, including the Letter of Credit itself.

**“LC Fee”** means any of the fees payable pursuant to Section 2.11(b) or Section 2.11(c) in respect of Letters of Credit.

**“LC Issuance”** means the issuance of any Letter of Credit by any LC Issuer for the account of an LC Obligor in accordance with the terms of this Agreement, and shall include any amendment thereto that increases the Stated Amount thereof or extends the expiry date of such Letter of Credit.

**“LC Issuer”** means KeyBank National Association or any of its Affiliates, or such other Lender that is requested by the Borrower and agrees to be an LC Issuer hereunder (*provided* that any such Lender is entitled to agree or decline in its sole discretion) and is approved by the Administrative Agent.

**“LC Obligor”** means, with respect to each LC Issuance, the Borrower or the Guarantor for whose account such Letter of Credit is issued.

**“LC Outstandings”** means, at any time, the sum, without duplication, of (i) the aggregate Stated Amount of all outstanding Letters of Credit and (ii) the aggregate amount of all Unpaid Drawings with respect to Letters of Credit.

**“LC Participant”** has the meaning provided in Section 2.05(g).

**“LC Participation”** has the meaning provided in Section 2.05(g).

**“LC Request”** has the meaning provided in Section 2.05(b).

**“Leaseholds”** of any Person means all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

**“Lender”** and **“Lenders”** have the meaning provided in the first paragraph of this Agreement and includes any other Person that becomes a party hereto pursuant to an Assignment Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment Agreement. Unless the context otherwise requires, the term **“Lenders”** includes the Swing Line Lender. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral and the benefit of any guarantees of the Obligations, as more fully set forth in this Agreement and the other Loan Documents, the term **“Lender”** shall include Secured Hedge Providers. For the avoidance of doubt, any Secured Hedge Provider to whom any Hedging Obligations are owed and that does not hold any Loans or commitments hereunder shall not be entitled to any other rights as a **“Lender”** under this Agreement or the other Loan Documents.

**“Lender Register”** has the meaning provided in Section 2.08(b).

**“Letter of Credit”** means any Standby Letter of Credit or Commercial Letter of Credit, in each case issued by any LC Issuer under this Agreement pursuant to Section 2.05 for the account of any LC Obligor.

**“LIBOR”** has the meaning provided in the definition of “Adjusted Eurodollar Rate”.

**“Lien”** means any mortgage, pledge, security interest, hypothecation, encumbrance, trust or deemed trust, lien (statutory or otherwise) or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof).

**“Loan”** means any Revolving Loan, Term Loan or Swing Loan.

**“Loan Documents”** means this Agreement, the Notes, the Guaranty, the Security Documents, the Administrative Agent Fee Letter, the Fee Letter, the Intercompany Subordination Agreement, and each Letter of Credit and each other LC Document.

**“Margin Stock”** has the meaning provided in Regulation U.

**“Material Adverse Effect”** means any or all of the following: (i) any material adverse effect on the business, operations, property, assets, liabilities or financial condition of the Credit Parties, taken as a whole, or the Borrower and its Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of the Credit Parties, taken as a whole, or the Borrower and its Subsidiaries, taken as a whole, to perform their obligations under any of the Loan Documents to which they are party; (iii) any material adverse effect on the validity, effectiveness or enforceability, as against any Credit Party, of any of the Loan Documents to which it is a party; (iv) any material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document; or (v) any material adverse effect on the validity, perfection or priority of any Lien in favor of the Administrative Agent on any of the Collateral.

**“Material Acquisition”** means any Permitted Acquisition for which the aggregate consideration (including the purchase price, any earn-out, any Indebtedness assumed and any other consideration) paid or payable exceeds \$20,000,000.

**“Material Contract”** means each contract or agreement to which the Borrower or any of its Subsidiaries is a party involving aggregate consideration payable to or by the Borrower or such Subsidiary of \$5,000,000 or more per annum (other than purchase orders in the ordinary course of business of the Borrower or such Subsidiary and other than contracts that by their terms may be terminated by the Borrower or such Subsidiary in the ordinary course of its business upon less than 60 days’ notice without penalty or premium).

**“Material Indebtedness”** means, as to the Borrower or any of its Subsidiaries, any particular Indebtedness of the Borrower or such Subsidiary (including any Guaranty Obligations) in excess of the aggregate principal amount of \$5,000,000.

**“Material Indebtedness Agreement”** means any agreement governing or evidencing any Material Indebtedness.

**“Maximum Rate”** has the meaning provided in Section 11.23.

**“Minimum Borrowing Amount”** means (i) with respect to any Base Rate Loan, \$1,000,000, with minimum increments thereafter of \$500,000, (ii) with respect to any Eurodollar Loan, \$1,000,000, with minimum increments thereafter of \$500,000, and (iii) with respect to Swing Loans, \$500,000, with minimum increments thereafter of \$500,000.

**“Minimum Collateral Amount”** means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the Fronting Exposure of all LC Issuers with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the LC Issuers in their sole discretion.

**“Moody’s”** means Moody’s Investors Service, Inc. and its successors.

**“Mortgage”** means a Mortgage, Deed of Trust or other instrument, in form and substance reasonably satisfactory to the Administrative Agent, executed by a Credit Party with respect to a Mortgaged Real Property, as the same may from time to time be amended, restated or otherwise modified.

**“Mortgaged Real Property”** means each parcel of Real Property that shall become subject to a Mortgage in accordance with Section 6.10(a), in each case together with all of such Credit Party’s right, title and interest in the improvements and buildings thereon and all appurtenances, easements or other rights belonging thereto.

**“Multi-Employer Plan”** means a multi-employer plan, as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding five plan years made or accrued an obligation to make contributions.

**“Multiple Employer Plan”** means an employee benefit plan, other than a Multi-Employer Plan, to which the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate, and one or more employers other than the Borrower or a Subsidiary of the Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which the Borrower or a Subsidiary of the Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

**“Narrative Report”** means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrower and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable fiscal quarter or fiscal year and for the period from the beginning of the then current fiscal year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.

**“National Flood Insurance Program”** means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

**“Net Cash Proceeds”** means, with respect to (i) any Asset Sale, the Cash Proceeds resulting therefrom net of (A) reasonable and customary expenses of sale incurred in connection with such Asset Sale, and other reasonable and customary fees and expenses incurred, and all state, provincial and local taxes paid or reasonably estimated to be payable by such person as a consequence of such Asset Sale, and the payment of principal, premium and interest of Indebtedness (other than the Obligations) secured by the asset that is the subject of such Asset Sale, and required to be, and that is, repaid under the terms thereof as a result of such Asset Sale, and (B) incremental federal, state, provincial and local income taxes paid or payable as a result thereof; (ii) any Event of Loss, the Cash Proceeds resulting therefrom net of (A) reasonable and customary expenses incurred in connection with such Event of Loss, and local taxes paid or reasonably estimated to be payable by such person as a consequence of such Event of Loss and the payment of principal, premium and interest of Indebtedness (other than the Obligations) secured by the asset that is the subject of the Event of Loss and required to be, and that is, repaid under the terms thereof as a result of such Event of Loss, and (B) incremental federal, state, provincial and local income taxes paid or payable as a result thereof; and (iii) the incurrence or issuance of any Indebtedness, the Cash Proceeds resulting therefrom net of reasonable and customary fees and expenses incurred in connection therewith and net of the repayment or payment of any Indebtedness or obligation intended to be repaid or paid with the proceeds of such Indebtedness; in the case of each of clauses (i), (ii) and (iii), to the extent, but only to the extent, that the amounts so deducted are (x) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (y) properly attributable to such transaction or to the asset that is the subject thereof.

**“Non-Consenting Lender”** has the meaning provided in [Section 11.12\(g\)](#).

**“Non-Credit Party”** means each Subsidiary that is not a Guarantor.

**“Non-Defaulting Lender”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“Note”** means a Revolving Facility Note, a Term Note or a Swing Line Note, as applicable.

**“Notice of Borrowing”** has the meaning provided in [Section 2.06\(b\)](#).

**“Notice of Continuation or Conversion”** has the meaning provided in [Section 2.10\(b\)](#).

“Notice of Swing Loan Refunding” has the meaning provided in Section 2.04(b).

“Notice Office” means the office of the Administrative Agent at Key Agency Services, 4900 Tiedeman Road, OH-01-49-0362, Brooklyn, OH 44144, Attention: KAS Services (email: Agent\_Servicing@keybank.com), or such other office as the Administrative Agent may designate in writing to the Borrower from time to time.

“Obligations” means all amounts, indemnities and reimbursement obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by the Borrower or any other Credit Party to the Administrative Agent, any Lender, any Affiliate of any Lender, the Swing Line Lender, any Secured Hedge Provider or any LC Issuer pursuant to the terms of this Agreement, any other Loan Document or any Designated Hedge Agreement (including, but not limited to, interest and fees that accrue after the commencement by or against any Credit Party of any insolvency proceeding or other proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code or analogous provision under any other Debtor Relief Laws); *provided*, however, that Obligations shall not include any Excluded Swap Obligations. Without limiting the generality of the foregoing description of Obligations, the Obligations include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, reasonable attorneys’ fees and disbursements, indemnities and other amounts payable by the Credit Parties under any Loan Document, (b) Banking Services Obligations, (c) Hedging Obligations and (d) the obligation to reimburse any amount in respect of any of the foregoing that any Agent, any Lender or any Affiliate or any Secured Hedge Provider of any of them, in connection with the terms of any Loan Document, may elect to pay or advance on behalf of the Credit Parties.

“OFAC” has the meaning provided in Section 5.24.

“Operating Lease” as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that Person.

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate or Memorandum) of Incorporation, or equivalent formation documents, and Regulations, Bylaws, Operating Agreements, or Articles, or equivalent governing documents, and, in the case of any partnership, includes any partnership agreement and any amendments to any of the foregoing.

“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 from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Participant Register” has the meaning provided in Section 11.06(b).

**“Payment Office”** means the office of the Administrative Agent at 4900 Tiedeman Road, Cleveland, OH, 44144, Attention: Paula Gordon (facsimile: 216 813-6101), or such other office(s), as the Administrative Agent may designate to the Borrower in writing from time to time.

**“PBGC”** means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

**“Perfection Certificate”** has the meaning provided in the Security Agreement.

**“Permitted Acquisition”** means any Acquisition by any Credit Party as to which all of the following conditions are satisfied:

(i) such Acquisition involves a line or lines of business that is or are complementary to the lines of business in which the Borrower and its Subsidiaries, considered as an entirety, are engaged on the Closing Date;

(ii) with respect to any Acquisition in which Consideration for such exceeds \$5,000,000, the Borrower shall have furnished to the Administrative Agent at least 5 Business Days prior to the consummation of such Acquisition (or such shorter period of time as the Administrative Agent agrees) (A) an executed term sheet and/or commitment letter (setting forth in reasonable detail the terms and conditions of such Acquisition) and, at the request of the Administrative Agent, such other information and documents that the Administrative Agent may request, including, without limitation, executed counterparts of the respective agreements, instruments or other documents pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements and any environmental reports), any schedules to such agreements, instruments or other documents and all other material ancillary agreements, instruments or other documents to be executed or delivered in connection therewith, (B) pro forma financial statements of the Borrower and its Subsidiaries giving effect to the consummation of such Acquisition, and (C) copies of such other agreements, instruments or other documents (other than the Loan Documents required by Section 6.10) as the Administrative Agent shall reasonably request;

(iii) the agreements, instruments and other documents referred to in paragraph (ii) above shall provide that (A) neither the Credit Parties nor any of their Subsidiaries shall, in connection with such Acquisition, assume or remain liable in respect of any Indebtedness of the seller or sellers, except for Indebtedness permitted hereunder, and (B) all property to be so acquired in connection with such Acquisition shall be free and clear of any and all Liens, except for Permitted Liens (and if any such property is subject to any Lien not permitted by this clause (B), then concurrently with such Acquisition such Lien shall be released);

(iv) such Acquisition shall be effected in such a manner so that the acquired Equity Interests or assets are owned either by a Credit Party or by a Person that will become a Credit Party in accordance with Section 6.09 and, if effected by merger or consolidation involving a Credit Party, such Credit Party shall be the continuing or surviving Person or the continuing or surviving Person shall become a Credit Party upon the effectiveness of such merger or consolidation;

(v) [reserved];

(vi) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;

(vii) the Borrower would, after giving effect to such Acquisition, on a pro forma basis (as determined in accordance with subpart (viii) below whether or not a certificate is required pursuant to such subpart (viii)), be in compliance with the financial covenants contained in Section 7.07; provided, however, that for any Acquisition in which Consideration exceeds \$5,000,000 for purposes of determining pro forma compliance with Section 7.07(a), the maximum Consolidated Leverage Ratio permitted at the time by Section 7.07(a) shall be deemed to be 0.50x less than the ratio actually provided for in Section 7.07(a) at such time;

(viii) at least five Business Days prior to the consummation of any such Acquisition in which the Consideration exceeds \$5,000,000, the Borrower shall have delivered to the Administrative Agent and the Lenders (A) a certificate of an Authorized Officer demonstrating, in reasonable detail, the computation of the financial covenants referred to in Section 7.07 on a *pro forma* basis, such *pro forma* ratios being determined as if (y) such Acquisition had been completed at the beginning of the most recent Testing Period for which financial information for the Borrower and the business or Person to be acquired, is available, and (z) any such Indebtedness, or other Indebtedness incurred to finance such Acquisition, had been outstanding for such entire Testing Period, and (B) historical financial statements relating to the business or Person to be acquired evidencing positive EBITDA on a *pro forma* basis (with such adjustments as the Administrative Agent agrees to) for the four fiscal quarter period most recently ended prior to the date of the Acquisition and such other information as the Administrative Agent may reasonably request;

(ix) all transactions in connection with such Acquisition shall be consummated, in all material respects, in accordance with all applicable laws;

(x) the Acquisition shall have been approved by the board of directors or other governing body or controlling Person of the Person from whom such Equity Interests or assets are proposed to be acquired;

(xi) as of the date of the Acquisition, a Financial Officer shall provide a certificate to the Administrative Agent and the Lenders certifying as to the matters set forth in the foregoing clauses and further certifying that the Acquisition could not reasonably be expected to have a Material Adverse Effect;

(xii) immediately after giving effect to such Acquisition, any acquired or newly formed Subsidiary shall be a wholly owned Subsidiary and shall take all actions required to be taken pursuant to Section 6.09 and Section 6.10 (or within 30 days of such Acquisition in the case of Section 6.10(c)); and

(xiii) immediately after giving effect to the Acquisition, the Credit Parties' unrestricted cash, together with Revolving Availability, shall be no less than \$10,000,000.

**“Permitted Creditor Investment”** means any securities (whether debt or equity) received by the Borrower or any of its Subsidiaries in connection with the bankruptcy or reorganization of any customer or supplier of the Borrower or any such Subsidiary and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business.

**“Permitted Earnout”** means any earnout, hold back amount, deferred purchase price or similar obligation of the Borrower or any Subsidiary that is (i) existing on the Closing Date and disclosed on Schedule 4 hereto, or (ii) incurred in connection with a Permitted Acquisition and is subordinated to the Obligations hereunder in a manner reasonably acceptable to the Administrative Agent or is otherwise on payment terms reasonably acceptable to the Administrative Agent.

**“Permitted Licenses”** means non-exclusive and exclusive licenses for the use of the Intellectual Property of the Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arm’s length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of the Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) the Borrower delivers ten (10) days’ prior written notice and a brief summary of the terms of the proposed license to the Administrative Agent and the Lenders and delivers to the Administrative Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States.

**“Permitted Lien”** means any Lien permitted by **Section 7.03**.

**“Permitted Refinancing”** means any refinancing, restructuring, refunding, renewal, extension or replacement of Indebtedness permitted hereunder; *provided* that (i) the principal amount (or accreted value, if applicable) of such Indebtedness is not increased at the time of such refinancing, restructuring, refunding, renewal, extension or replacement (except by an amount equal to accrued interest and any premiums, fees and expenses incurred, in connection with such refinancing, restructuring, refunding, renewal, extension or replacement), (ii) such refinancing, restructuring, refunding, renewal, extension or replacement shall not result in an earlier maturity date or decreased weighted average life of such Indebtedness, (iii) the terms relating to collateral (if any) and subordination (if any), and other material terms, taken as a whole, of any such refinancing, restructuring, refunding, renewal, extension or replacement indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are not materially less favorable (taken as a whole) to the Credit Parties, the Agent and the Lenders than the terms of the agreements or instruments governing the Indebtedness being refinanced, refunded, renewed, restructured, extended or replaced (taken as a whole) and (iv) the terms of such refinancing, restructuring, refunding, renewal, extension or replacement shall not bind any obligor that is not an obligor under the Indebtedness being refinanced, restructured, refunded, renewed, extended or replaced.

**“Person”** means any individual, partnership, joint venture, firm, corporation, limited liability company, association, central bank, trust or other enterprise or any governmental or political subdivision or any agency, department or instrumentality thereof.

**“Plan”** means any Multi-Employer Plan, Multiple Employer Plan or Single-Employer Plan.

**“Platform”** has the meaning provided in **Section 9.15(b)**.

**“primary Indebtedness”** has the meaning provided in the definition of “Guaranty Obligations.”

**“primary obligor”** has the meaning provided in the definition of “Guaranty Obligations.”

**“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.

**“Purchase Date”** has the meaning provided in **Section 2.04(c)**.

**"Purchase Money Indebtedness"** means, for any Person, Indebtedness incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; *provided, however,* that (i) such Indebtedness is incurred within 180 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such person and (ii) the amount of such Indebtedness does not exceed the lesser of 100% of the fair market value of such fixed or capital asset at the time incurred or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

**"Qualified ECP Guarantor"** means, in respect of any Obligations with respect to a Designated Hedge Agreement, each Credit 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 Obligations 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.

**"RCRA"** means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

**"Real Property"** of any Person means all of the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

**"Recipient"** means (a) the Administrative Agent, (b) any Lender and (c) any LC Issuer, as applicable.

**"Regulation D"** means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

**"Regulation U"** means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

**"Related Parties"** means, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

**"Remedial Action"** means all actions any Environmental Law requires any Credit Party to: (i) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the environment; (ii) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the environment; (iii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (iv) perform any other actions authorized by 42 U.S.C. § 9601.

**"Reportable Event"** means an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsection .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

**"Required Lenders"** means Lenders whose Credit Facility Exposure and Unused Revolving Commitments constitute more than 50% of the sum of the Aggregate Credit Facility Exposure and the Unused Total Revolving Commitment; provided that, to the extent there are less than five Lenders at such time, Required Lenders must consist of at least two Lenders that are not Affiliates. The Credit Facility Exposure and Unused Revolving Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**“Required Revolving Lenders”** means Lenders whose Revolving Facility Exposure and Unused Revolving Commitments constitute more than 50% of the sum of the Aggregate Revolving Facility Exposure and the Unused Total Revolving Commitment; provided that, to the extent there are less than five Lenders at such time, Required Revolving Lenders must consist of at least two Lenders that are not Affiliates. The Revolving Facility Exposure and Unused Revolving Commitments of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time.

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Restricted Payment”** means (i) any Capital Distribution, (ii) any amount paid by the Borrower or any of its Subsidiaries in repayment, redemption, retirement, repurchase, payments, or prepayment, direct or indirect, of any Subordinated Indebtedness or any Permitted Earnouts, (iii) any payment by the Borrower or any of its Subsidiaries of any management fees, consulting fees or any similar fees, whether pursuant to a management agreement or otherwise, or (iv) any distribution of assets pursuant to a plan of statutory division, or (v) any voluntary or mandatory prepayment of principal of any junior indebtedness, Subordinated Indebtedness or any unsecured Indebtedness.

**“Resulting Company”** means any Person formed by virtue of any statutory division of any Credit Party.

**“Revolving Availability”** means, at the time of determination, (a) the sum of all Revolving Commitments at such time less (b) the sum of (i) the principal amount of Revolving Loans and Swing Loans made and outstanding at such time and (ii) the LC Outstandings at such time.

**“Revolving Borrowing”** means the incurrence of Revolving Loans consisting of one Type of Revolving Loan by the Borrower from all of the Lenders having Revolving Commitments in respect thereof on a *pro rata* basis on a given date (or resulting from Conversions or Continuations on a given date) in the same currency, having in the case of any Eurodollar Loans, the same Interest Period.

**“Revolving Commitment”** means, with respect to each Lender, the amount set forth opposite such Lender’s name in Schedule 1 hereto as its “Revolving Commitment” or in the case of any Lender that becomes a party hereto pursuant to an Assignment Agreement, the amount set forth in such Assignment Agreement, as such commitment may be reduced from time to time pursuant to Section 2.12 or adjusted from time to time as a result of assignments to or from such Lender pursuant to Section 11.06 and any Incremental Revolving Credit Commitments.

**“Revolving Facility”** means the credit facility established under Section 2.02 pursuant to the Revolving Commitment of each Lender.

**“Revolving Facility Availability Period”** means the period from the Closing Date until the Revolving Facility Termination Date.

**“Revolving Facility Exposure”** means, for any Lender at any time, the sum of (i) the principal amount of Revolving Loans made by such Lender and outstanding at such time, and (ii) such Lender’s share of the LC Outstandings at such time.

**“Revolving Facility Note”** means a promissory note substantially in the form of Exhibit A-1 hereto.

**“Revolving Facility Percentage”** means, at any time for any Lender, the percentage obtained by dividing such Lender’s Revolving Commitment by the Total Revolving Commitment, *provided, however,* that if the Total Revolving Commitment has been terminated, the Revolving Facility Percentage for each Lender shall be determined by dividing such Lender’s Revolving Commitment immediately prior to such termination by the Total Revolving Commitment immediately prior to such termination.

**"Revolving Facility Termination Date"** means, as applicable, the earlier of (i) June 22, 2025, or (ii) the date that the Commitments have been terminated pursuant to Section 8.02.

**"Revolving Loan"** means, with respect to each Lender, any loan made by such Lender pursuant to Section 2.02.

**"S&P"** means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., and its successors.

**"Sale and Lease-Back Transaction"** means any arrangement with any Person providing for the leasing by the Borrower or any Subsidiary of the Borrower of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between the Borrower and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by the Borrower or such Subsidiary to such Person.

**"Sanctions"** has the meaning provided in Section 5.24.

**"Scheduled Repayment"** has the meaning provided in Section 2.13(b).

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

**"SEC Regulation D"** means Regulation D as promulgated under the Securities Act of 1933, as amended, as the same may be in effect from time to time.

**"Secured Creditors"** has the meaning provided in the Security Agreement.

**"Secured Hedge Provider"** means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Designated Hedge Agreement) who has entered into a Designated Hedge Agreement with the Borrower or any of its Subsidiaries.

**"Security Agreement"** has the meaning provided in Section 4.01(iii).

**"Security Documents"** means the Security Agreement, each Mortgage, each Landlord's Agreement, each Additional Security Document, any UCC financing statement, any Control Agreement, any Collateral Assignment, any Perfection Certificate and any document pursuant to which any Lien is granted or perfected by any Credit Party to the Administrative Agent as security for any of the Obligations.

**"Seller"** has the meaning provided in the preliminary statements hereto.

**"Single Employer Plan"** means a single employer plan, as defined in Section 4001(a)(15) of ERISA, to which the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

**"SPC"** has the meaning provided in Section 11.06(f).

**"Specified Investments"** means investments by the Borrower or any Credit Party in those two certain funds at JPMorgan Chase & Co. as disclosed to the Lenders prior to the Closing Date so long as the investment policy related thereto remains substantially consistent to the investment policy in place on the Closing Date.

"Standard Permitted Lien" means any of the following:

- (i) Liens for taxes not yet delinquent or Liens for taxes, assessments or governmental charges being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;
- (ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as carriers', suppliers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries and do not secure any Indebtedness;
- (iii) Liens created by this Agreement or the other Loan Documents;
- (iv) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.01(h);
- (v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers compensation, unemployment insurance and other types of social security, and mechanic's Liens, carrier's Liens, and other Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, surety, appeal, customs, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;
- (vi) leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of the Borrower or any of its Subsidiaries and any interest or title of a lessor under any lease not in violation of this Agreement;
- (vii) easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other persons, and obligations contained in similar instruments, in each case that do not secure Indebtedness and do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of the Borrower and its Subsidiaries considered as an entirety, or (B) a Material Adverse Effect;
- (viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) not in violation of the requirements of this Agreement, *provided* that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor);
- (ix) rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC;
- (x) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(xi) Liens that are contractual rights of setoff or rights of pledge (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(xii) Permitted Licenses; and

(xiii) Liens on insurance premium refunds and insurance proceeds granted in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums.

**“Standby Letter of Credit”** means any standby letter of credit issued for the purpose of supporting workers compensation, liability insurance, releases of contract retention obligations, contract performance guarantee requirements and other bonding obligations or for other lawful purposes.

**“Stated Amount”** of each Letter of Credit means the maximum amount available to be drawn thereunder (regardless of whether any conditions or other requirements for drawing could then be met).

**“Subordinated Debt Documents”** means, collectively, any loan agreements, indentures, note purchase agreements, promissory notes, guarantees and other instruments and agreements evidencing the terms of any Subordinated Indebtedness.

**“Subordinated Indebtedness”** means any Indebtedness that has been subordinated to the prior payment in full of all of the Obligations pursuant to a written agreement or written terms acceptable to the Administrative Agent.

**“Subsidiary”** of any Person means (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary Voting Power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have Voting Power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries, owns more than 50% of the Equity Interests of such Person at the time or in which such Person, one or more other Subsidiaries of such Person or such Person and one or more Subsidiaries of such Person, directly or indirectly, has the power to direct the policies, management and affairs thereof. Unless otherwise expressly provided, all references herein to “Subsidiary” means a Subsidiary of the Borrower.

**“Swap Obligation”** means, with respect to the Borrower or any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**“Swing Line Commitment”** means \$5,000,000.

**“Swing Line Facility”** means the credit facility established under **Section 2.04** pursuant to the Swing Line Commitment of the Swing Line Lender.

**“Swing Line Lender”** means KeyBank National Association or any replacement or successor thereto.

“Swing Line Note” means a promissory note substantially in the form of Exhibit A-2 hereto.

“Swing Line Participation Amount” has the meaning provided in Section 2.04(c).

“Swing Loan” means any loan made by the Swing Line Lender under the Swing Line Facility pursuant to Section 2.04.

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (i) the last day of the period for such Swing Loan as established by the Swing Line Lender and agreed to by the Borrower, which shall be less than seven (7) Business Days, and (ii) the Revolving Facility Termination Date.

“Swing Loan Participation” has the meaning provided in Section 2.04(c).

“Synthetic Lease” means any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the “owner” of the leased property for federal income tax purposes.

“Synthetic Lease Obligations” means, as to any person, an amount equal to the capitalized amount of the remaining lease payments under any Synthetic Lease that would appear on a balance sheet of such person in accordance with GAAP if such obligations were accounted for as Capitalized Lease Obligations.

“Target Assets” has the meaning provided in the first paragraph to this Agreement.

“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 the incurrence of Term Loans or Incremental Term Loans consisting of one Type of Term Loan by the Borrower from all of the Lenders having Term Commitments in respect thereof on a *pro rata* basis on a given date (or resulting from Conversions or Continuations on a given date), having in the case of Eurodollar Loans the same Interest Period.

“Term Commitment” means, with respect to each Lender, the amount, if any, set forth opposite such Lender’s name in Schedule 1 hereto as its “Term Commitment” or in the case of any Lender that becomes a party hereto pursuant to an Assignment Agreement, the amount set forth in such Assignment Agreement, as such commitment may be reduced from time to time as a result of assignments to or from such Lender pursuant to Section 11.06 and any Incremental Term Loan Commitments.

“Term Loan” means, with respect to each Lender that has a Term Commitment, any loan made by such Lender pursuant to Section 2.03. Unless the context shall otherwise require, the term “Term Loans” shall include the Incremental Term Loans, if any.

“Term Loan Maturity Date” means, as applicable, (a) with respect to any Term Loans made on the Closing Date, the Initial Term Loan Maturity Date, (b) with respect to any Incremental Term Loan, the applicable Incremental Term Loan Maturity Date, or (c) with respect to all Term Loans, the latest of the dates referred to in clause (a), (b) and (c).

“Term Note” means a promissory note substantially in the form of Exhibit A-3 hereto.

“Testing Period” means a single period consisting of the four consecutive fiscal quarters of the Borrower then last ended (whether or not such quarters are all within the same fiscal year), *except* that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

“Title Company” has the meaning provided in Section 6.10(c)(i).

“Title Policy” has the meaning provided in Section 6.10(c)(i).

“Total Credit Facility Amount” means the aggregate of the Total Revolving Commitment and the Total Term Loan Commitment. As of the Closing Date, the Total Credit Facility Amount is \$65,000,000.

“Total Revolving Commitment” means the sum of the Revolving Commitments of the Lenders as the same may be decreased pursuant to Section 2.12(c) hereof. As of the Closing Date, the amount of the Total Revolving Commitment is \$25,000,000.

“Total Term Loan Commitment” means the sum of the Term Commitments of the Lenders. As of the Closing Date, the amount of the Total Term Loan Commitment is \$40,000,000.

“Transaction Documents” means, collectively, the Loan Documents and the Closing Date Acquisition Documentation, and includes all schedules, exhibits and annexes thereto and all side letters and agreements affecting the terms thereof or entered into in connection therewith.

“Transactions” means the transactions contemplated by the Transaction Documents.

“Type” means any type of Loan determined with respect to the interest option and currency denomination applicable thereto, which in each case shall be a Base Rate Loan or a Eurodollar Loan.

“UCC” means the Uniform Commercial Code as in effect from time to time. Unless otherwise specified, the UCC shall refer to the UCC as in effect in the State of New York.

“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 Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Unfunded Benefit Liabilities” of any Plan means the amount, if any, of its unfunded benefit liabilities, as defined in Section 4001(a)(18) of ERISA.

“United States” and “U.S.” each means United States of America.

“Unpaid Drawing” means, with respect to any Letter of Credit, the aggregate Dollar amount of the draws made on such Letter of Credit that have not been reimbursed by the Borrower or the applicable LC Obligor or converted to a Revolving Loan pursuant to Section 2.05(f)(i), and, in each case, all interest that accrues thereon pursuant to this Agreement.

**"Unused Revolving Commitment"** means, for any Lender at any time, the excess of (i) such Lender's Revolving Commitment at such time over (ii) such Lender's Revolving Facility Exposure at such time.

**"Unused Total Revolving Commitment"** means, at any time, the excess of (i) the Total Revolving Commitment at such time over (ii) the Aggregate Revolving Facility Exposure at such time.

**"U.S. Person"** means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**"U.S. Tax Compliance Certificate"** has the meaning assigned to such term in Section 3.03(g)(ii)(B)(iii).

**"USA Patriot Act"** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001.

**"Voting Power"** means, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person, and the holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or other similar governing body of such Person.

**"Withholding Agent"** means any Credit 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    Computation of Time Periods.** In this Agreement 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 means "to but excluding" and the word "through" means "through and including."

**Section 1.03    Accounting Terms.** Except as otherwise specifically provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, *provided* that if the Borrower notifies the Administrative Agent and the Lenders that the Borrower wishes to amend any financial ratio or requirement to eliminate the effect of any change in GAAP that occurs after the Closing Date on the operation of such financial ratio or requirement (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend any financial ratio or requirement for such purpose), then the Borrower's compliance with such financial ratio or requirement shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such financial ratio or requirement is amended in a manner satisfactory to the Borrower, the Administrative Agent and the Required Lenders, with the Borrower, the Administrative Agent and the Lenders agreeing to enter into negotiations to amend any such financial ratio or requirement immediately upon receipt from any party entitled to send such notice. Notwithstanding the foregoing, (A) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof and (B) all terms of an accounting or financial nature used herein shall be construed shall be made in a manner such that all liabilities related to operating leases, as defined by Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect), are excluded from the definition of Indebtedness and payments related to operating leases are not included in Consolidated Interest Expense in part or in whole. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Borrower's historical financial statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

Section 1.04 Terms Generally. 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, (a) 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 from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) 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, (d) all references herein to Sections, Schedules and Exhibits shall be construed to refer to Sections of, and Schedules and Exhibits to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all Real Property, tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and interests in any of the foregoing, and (f) any reference to a statute, rule or regulation is to that statute, rule or regulation as now enacted or as the same may from time to time be amended, re-enacted or expressly replaced.

Section 1.05 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.

## ARTICLE II.

### THE TERMS OF THE CREDIT FACILITY

Section 2.01 Establishment of the Credit Facility. On the Closing Date, and subject to and upon the terms and conditions set forth in this Agreement and the other Loan Documents, the Administrative Agent, the Lenders, the Swing Line Lender and each LC Issuer agree to establish the Credit Facility for the benefit of the Borrower; *provided, however,* that at no time will (i) the Aggregate Credit Facility Exposure exceed the Total Credit Facility Amount, or (ii) the Credit Facility Exposure of any Lender exceed the aggregate amount of such Lender’s Commitment.

Section 2.02 Revolving Facility. During the Revolving Facility Availability Period, each Lender severally, and not jointly, agrees, on the terms and conditions set forth in this Agreement, to make a Revolving Loan or Revolving Loans to the Borrower from time to time pursuant to such Lender's Revolving Commitment, which Revolving Loans: (i) may, except as set forth herein, at the option of the Borrower, be incurred and maintained as, or Converted into, Revolving Loans that are Base Rate Loans or Eurodollar Loans, in each case denominated in Dollars, *provided* that all Revolving Loans made as part of the same Revolving Borrowing shall consist of Revolving Loans of the same Type; (ii) may be repaid or prepaid and reborrowed in accordance with the provisions hereof; and (iii) shall not be made if, after giving effect to any such Revolving Loan, (A) the Revolving Facility Exposure of any Lender would exceed such Lender's Revolving Commitment, (B) the Aggregate Revolving Facility Exposure *plus* the principal amount of Swing Loans would exceed the Total Revolving Commitment, or (C) the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(iii). The Revolving Loans to be made by each Lender will be made by such Lender on a *pro rata* basis based upon such Lender's Revolving Facility Percentage of each Revolving Borrowing, in each case in accordance with Section 2.07 hereof.

Section 2.03 Term Loan. On the Closing Date, each Lender that has a Term Commitment severally, and not jointly, agrees, on the terms and conditions set forth in this Agreement, to make a Term Loan to the Borrower pursuant to such Lender's Term Commitment, which Term Loans: (i) can only be incurred on the Closing Date in the entire amount of each Lender's Term Commitment; (ii) once prepaid or repaid, may not be reborrowed; (iii) may, except as set forth herein, at the option of the Borrower, be incurred and maintained as, or Converted into, Term Loans that are Base Rate Loans or Eurodollar Loans, in each case denominated in Dollars, *provided* that all Term Loans made as part of the same Term Borrowing shall consist of Term Loans of the same Type; (iv) shall be repaid in accordance with Section 2.13(b); and (v) shall not exceed (A) for any Lender at the time of incurrence thereof the aggregate principal amount of such Lender's Term Commitment, if any, and (B) for all the Lenders at the time of incurrence thereof the Total Term Loan Commitment. The Term Loans to be made by each Lender will be made by such Lender in the aggregate amount of its Term Commitment in accordance with Section 2.07 hereof.

Section 2.04 Swing Line Facility.

(a) Swing Loans. During the Revolving Facility Availability Period, the Swing Line Lender may, on the terms and conditions set forth in this Agreement, make a Swing Loan or Swing Loans to the Borrower from time to time, which Swing Loans: (i) shall be payable on the Swing Loan Maturity Date applicable to each such Swing Loan; (ii) shall be made only in U.S. Dollars; (iii) may be repaid or prepaid and reborrowed in accordance with the provisions hereof; (iv) may only be made if after giving effect thereto (A) the aggregate principal amount of Swing Loans outstanding does not exceed the Swing Line Commitment, and (B) the Aggregate Revolving Facility Exposure *plus* the principal amount of Swing Loans would not exceed the Total Revolving Commitment; (v) shall not be made if, after giving effect thereto, the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(ii) or (iii) hereof; (vi) shall not be made if the proceeds thereof would be used to repay, in whole or in part, any outstanding Swing Loan and (vii) at no time shall there be more than three Borrowings of Swing Loans outstanding hereunder.

(b) Swing Loan Refunding. The Swing Line Lender may at any time, in its sole and absolute discretion, direct that the Swing Loans owing to it be refunded by delivering a notice to such effect to the Administrative Agent, specifying the aggregate principal amount thereof (a “Notice of Swing Loan Refunding”). Promptly upon receipt of a Notice of Swing Loan Refunding, the Administrative Agent shall give notice of the contents thereof to the Lenders with Revolving Commitments and, unless an Event of Default specified in Section 8.01(i) in respect of the Borrower has occurred, the Borrower. Each such Notice of Swing Loan Refunding shall be deemed to constitute delivery by the Borrower of a Notice of Borrowing requesting Revolving Loans consisting of Base Rate Loans in the amount of the Swing Loans to which it relates. Each Lender with a Revolving Commitment (including the Swing Line Lender) hereby unconditionally agrees (notwithstanding that any of the conditions specified in Section 4.02 or elsewhere in this Agreement shall not have been satisfied, but subject to the provisions of paragraph (d) below) to make a Revolving Loan to the Borrower in the amount of such Lender’s Revolving Facility Percentage of the aggregate amount of the Swing Loans to which such Notice of Swing Loan Refunding relates. Each such Lender shall make the amount of such Revolving Loan available to the Administrative Agent in immediately available funds at the Payment Office not later than 2:00 P.M. (local time at the Payment Office), if such notice is received by such Lender prior to 11:00 A.M. (local time at its Payment Office), or not later than 2:00 P.M. (local time at the Payment Office) on the next Business Day, if such notice is received by such Lender after such time. The proceeds of such Revolving Loans shall be made immediately available to the Swing Line Lender and applied by it to repay the principal amount of the Swing Loans to which such Notice of Swing Loan Refunding relates.

(c) Swing Loan Participation. If prior to the time a Revolving Loan would otherwise have been made as provided above as a consequence of a Notice of Swing Loan Refunding, any of the events specified in Section 8.01(i) shall have occurred in respect of the Borrower or one or more of the Lenders with Revolving Commitments shall determine that it is legally prohibited from making a Revolving Loan under such circumstances, each Lender (other than the Swing Line Lender), or each Lender (other than such Swing Line Lender) so prohibited, as the case may be, shall, on the date such Revolving Loan would have been made by it (the “Purchase Date”), purchase an undivided participating interest (a “Swing Line Participation”) in the outstanding Swing Loans to which such Notice of Swing Loan Refunding relates, in an amount (the “Swing Line Participation Amount”) equal to such Lender’s Revolving Facility Percentage of such outstanding Swing Loans. On the Purchase Date, each such Lender or each such Lender so prohibited, as the case may be, shall pay to the Swing Line Lender, in immediately available funds, such Lender’s Swing Line Participation Amount, and promptly upon receipt thereof the Swing Line Lender shall, if requested by such other Lender, deliver to such Lender a participation certificate, dated the date of the Swing Line Lender’s receipt of the funds from, and evidencing such Lender’s Swing Line Participation in, such Swing Loans and its Swing Line Participation Amount in respect thereof. If any amount required to be paid by a Lender to the Swing Line Lender pursuant to the above provisions in respect of any Swing Loan Participation is not paid on the date such payment is due, such Lender shall pay to the Swing Line Lender on demand interest on the amount not so paid at the overnight Federal Funds Effective Rate from the due date until such amount is paid in full. Whenever, at any time after the Swing Line Lender has received from any other Lender such Lender’s Swing Line Participation Amount, the Swing Line Lender receives any payment from or on behalf of the Borrower on account of the related Swing Loans, the Swing Line Lender will promptly distribute to such Lender its ratable share of such amount based on its Revolving Facility Percentage of such amount on such date on account of its Swing Loan Participation (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender’s participating interest was outstanding and funded); *provided, however,* that if such payment received by the Swing Line Lender is required to be returned, such Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(d) **Obligations Unconditional.** Each Lender's obligation to make Revolving Loans pursuant to Section 2.04(b) and/or to purchase Swing Loan Participations in connection with a Notice of Swing Loan Refunding shall be subject to the conditions that (i) such Lender shall have received a Notice of Swing Loan Refunding complying with the provisions hereof and (ii) at the time the Swing Loans that are the subject of such Notice of Swing Loan Refunding were made, the Swing Line Lender making the same had no actual written notice from another Lender that an Event of Default had occurred and was continuing, but otherwise shall be absolute and unconditional, shall be solely for the benefit of the Swing Line Lender that gives such Notice of Swing Loan Refunding, and shall not be affected by any circumstance, including, without limitation, (A) any set-off, counterclaim, recoupment, defense or other right that such Lender may have against any other Lender, any Credit Party, or any other Person, or any Credit Party may have against any Lender or other Person, as the case may be, for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default; (C) any event or circumstance involving a Material Adverse Effect; (D) any breach of any Loan Document by any party thereto; or (E) any other circumstance, happening or event, whether or not similar to any of the foregoing.

## Section 2.05 Letters of Credit.

(a) **LC Issuances.** During the Revolving Facility Availability Period, the Borrower may request an LC Issuer at any time and from time to time to issue, for the account of the Borrower or any Subsidiary, and subject to and upon the terms and conditions herein set forth, each LC Issuer agrees to issue from time to time Letters of Credit denominated and payable in Dollars and in each case in such form as may be approved by such LC Issuer and the Administrative Agent; *provided, however,* that notwithstanding the foregoing, no LC Issuance shall be made if, after giving effect thereto, (i) the LC Outstandings would exceed the LC Commitment Amount, (ii) the Revolving Facility Exposure of any Lender would exceed such Lender's Revolving Commitment, (iii) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans outstanding would exceed the Total Revolving Commitment, or (iv) the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(ii) or Section 2.13(c)(iii) hereof; and *provided, further,* that the Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary that is not a Guarantor hereof. Subject to Section 2.05(c) below, each Letter of Credit shall have an expiry date (including any renewal periods) occurring not later than the earlier of (y) one year from the date of issuance thereof, or (z) 30 days prior to the Revolving Facility Termination Date.

(b) **LC Requests.** Whenever the Borrower desires that a Letter of Credit be issued for its account or the account of any eligible LC Obligor, the Borrower shall give the Administrative Agent and the applicable LC Issuer written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) which, if in the form of written notice, shall be substantially in the form of Exhibit B-3 (each such request, an "LC Request"), or transmit by electronic communication (if arrangements for doing so have been approved by the applicable LC Issuer), prior to 11:00 A.M. (local time at the Notice Office) at least three Business Days (or such shorter period as may be acceptable to the relevant LC Issuer) prior to the proposed date of issuance (which shall be a Business Day), which LC Request shall include such supporting documents that such LC Issuer customarily requires in connection therewith (including, in the case of a Letter of Credit for an account party other than the Borrower, an application for, and if applicable a reimbursement agreement with respect to, such Letter of Credit). In the event of any inconsistency between any of the terms or provisions of any LC Document and the terms and provisions of this Agreement respecting Letters of Credit, the terms and provisions of this Agreement shall control.

(c) **Auto-Extension Letters of Credit.** If an LC Obligor so requests in any applicable LC Request, each LC Issuer shall agree to issue a Letter of Credit that has automatic extension provisions; *provided, however,* that any Letter of Credit that has automatic extension provisions must permit such LC Issuer to prevent any such renewal 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 in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Once any such Letter of Credit that has automatic extension provisions has been issued, the Lenders shall be deemed to have authorized (but may not require) such LC Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than 30 days prior to the Revolving Facility Termination Date; *provided, however,* that such LC Issuer shall not permit any such renewal if (i) such LC Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof, or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is two Business Days before the date that such LC Issuer is permitted to send a notice of non-renewal from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(d) Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the applicable LC Issuer and the applicable LC Obligor, when a Letter of Credit is issued, (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance (including the International Chamber of Commerce's decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each Standby Letter of Credit and Commercial Letter of Credit.

(e) Notice of LC Issuance. Each LC Issuer shall, on the date of each LC Issuance by it, give the Administrative Agent, each applicable Lender and the Borrower written notice of such LC Issuance, accompanied by a copy to the Administrative Agent of the Letter of Credit or Letters of Credit issued by it. Each LC Issuer shall provide to the Administrative Agent a quarterly (or monthly if requested by any applicable Lender) summary describing each Letter of Credit issued by such LC Issuer and then outstanding and an identification for the relevant period of the daily aggregate LC Outstandings represented by Letters of Credit issued by such LC Issuer.

(f) Reimbursement Obligations.

(i) The Borrower hereby agrees to reimburse (or cause any LC Obligor for whose account a Letter of Credit was issued to reimburse) each LC Issuer, by making payment directly to such LC Issuer in immediately available funds at the payment office of such LC Issuer, for any Unpaid Drawing with respect to any Letter of Credit immediately after, and in any event on the date on which, such LC Issuer notifies the Borrower (or any such other LC Obligor for whose account such Letter of Credit was issued) of such payment or disbursement (which notice to the Borrower (or such other LC Obligor) shall be delivered reasonably promptly after any such payment or disbursement), such payment to be made in Dollars in which such Letter of Credit is denominated, with interest on the amount so paid or disbursed by such LC Issuer, to the extent not reimbursed prior to 1:00 P.M. (local time at the payment office of the applicable LC Issuer) on the date of such payment or disbursement, from and including the date paid or disbursed to but not including the date such LC Issuer is reimbursed therefor at a rate per annum that shall be the rate then applicable to Revolving Loans pursuant to Section 2.09(a) that are Base Rate Loans or, if not reimbursed on the date of such payment or disbursement, at the Default Rate, any such interest also to be payable on demand. If by 11:00 A.M. on the Business Day immediately following notice to it of its obligation to make reimbursement in respect of an Unpaid Drawing, the Borrower or the relevant LC Obligor has not made such reimbursement out of its available cash on hand or, in the case of the Borrower, a contemporaneous Borrowing hereunder (if such Borrowing is otherwise available to the Borrower), (x) the Borrower will in each case be deemed to have given a Notice of Borrowing for Revolving Loans that are Base Rate Loans in an aggregate principal amount sufficient to reimburse such Unpaid Drawing (and the Administrative Agent shall promptly give notice to the Lenders of such deemed Notice of Borrowing), (y) the Lenders shall, unless they are legally prohibited from doing so, make the Revolving Loans contemplated by such deemed Notice of Borrowing (which Revolving Loans shall be considered made under Section 2.02), and (z) the proceeds of such Revolving Loans shall be disbursed directly to the applicable LC Issuer to the extent necessary to effect such reimbursement and repayment of the Unpaid Drawing, with any excess proceeds to be made available to the Borrower in accordance with the applicable provisions of this Agreement.

(ii) Obligations Absolute. Each LC Obligor's obligation under this Section to reimburse each LC Issuer with respect to Unpaid Drawings (including, in each case, interest thereon) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that such LC Obligor may have or have had against such LC Issuer, the Administrative Agent or any Lender, including, without limitation, any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing; *provided, however,* that no LC Obligor shall be obligated to reimburse an LC Issuer for any wrongful payment made by such LC Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such LC Issuer.

(g) LC Participations.

(i) Immediately upon each LC Issuance, the LC Issuer of such Letter of Credit shall be deemed to have sold and transferred to each Lender with a Revolving Commitment, and each such Lender (each an "LC Participant") shall be deemed irrevocably and unconditionally to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation (an "LC Participation"), to the extent of such Lender's Revolving Facility Percentage of the Stated Amount of such Letter of Credit in effect at such time of issuance, in such Letter of Credit, each substitute Letter of Credit, each drawing made thereunder, the obligations of any LC Obligor under this Agreement with respect thereto (although LC Fees relating thereto shall be payable directly to the Administrative Agent for the account of the Lenders as provided in Section 2.11 and the LC Participants shall have no right to receive any portion of any fees of the nature contemplated by Section 2.11(c) or Section 2.11(d)), the obligations of any LC Obligor under any LC Documents pertaining thereto, and any security for, or guaranty pertaining to, any of the foregoing.

(ii) In determining whether to pay under any Letter of Credit, an LC Issuer shall not have any obligation relative to the LC Participants other than to determine that any documents required to be delivered under such Letter of Credit have been delivered and that they appear to comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by an LC Issuer under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such LC Issuer any resulting liability.

(iii) If an LC Issuer makes any payment under any Letter of Credit and the applicable LC Obligor shall not have reimbursed such amount in full to such LC Issuer pursuant to Section 2.05(f), such LC Issuer shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each LC Participant of such failure, and each LC Participant shall promptly and unconditionally pay to the Administrative Agent for the account of such LC Issuer, the amount of such LC Participant's Revolving Facility Percentage of such payment in Dollars and in same-day funds; *provided, however,* that no LC Participant shall be obligated to pay to the Administrative Agent its Revolving Facility Percentage of such unreimbursed amount for any wrongful payment made by such LC Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such LC Issuer. If the Administrative Agent so notifies any LC Participant required to fund a payment under a Letter of Credit prior to 11:00 A.M. (local time at its Notice Office) on any Business Day, such LC Participant shall make available to the Administrative Agent for the account of the relevant LC Issuer such LC Participant's Revolving Facility Percentage of the amount of such payment on such Business Day in same-day funds. If and to the extent such LC Participant shall not have so made its Revolving Facility Percentage of the amount of such payment available to the Administrative Agent for the account of the relevant LC Issuer, such LC Participant agrees to pay to the Administrative Agent for the account of such LC Issuer, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such LC Issuer at the Federal Funds Effective Rate. The failure of any LC Participant to make available to the Administrative Agent for the account of the relevant LC Issuer its Revolving Facility Percentage of any payment under any Letter of Credit shall not relieve any other LC Participant of its obligation hereunder to make available to the Administrative Agent for the account of such LC Issuer its Revolving Facility Percentage of any payment under any Letter of Credit on the date required, as specified above, but no LC Participant shall be responsible for the failure of any other LC Participant to make available to the Administrative Agent for the account of such LC Issuer such other LC Participant's Revolving Facility Percentage of any such payment.

(iv) Whenever an LC Issuer receives a payment of a reimbursement obligation as to which the Administrative Agent has received for the account of such LC Issuer any payments from the LC Participants pursuant to subpart (iii) above, such LC Issuer shall pay to the Administrative Agent and the Administrative Agent shall promptly pay to each LC Participant that has paid its Revolving Facility Percentage thereof, in same-day funds, an amount equal to such LC Participant's Revolving Facility Percentage of the principal amount thereof and interest thereon accruing after the purchase of the respective LC Participations, as and to the extent so received.

(v) The obligations of the LC Participants to make payments to the Administrative Agent for the account of each LC Issuer with respect to Letters of Credit shall be irrevocable and not subject to counterclaim, set-off or other defense or any other qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including, without limitation, any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, set-off defense or other right that any LC Obligor may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, any LC Issuer, any Lender, or other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the applicable LC Obligor and the beneficiary named in any such Letter of Credit), other than any claim that the applicable LC Obligor may have against any applicable LC Issuer for gross negligence or willful misconduct of such LC Issuer in making payment under any applicable Letter of Credit;

(C) any draft, certificate or other document presented under the 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;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; or

(E) the occurrence of any Default or Event of Default.

(vi) To the extent any LC Issuer is not indemnified by the Borrower or any LC Obligor, the LC Participants will reimburse and indemnify such LC Issuer, in proportion to their respective Revolving Facility Percentages, for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature that may be imposed on, asserted against or incurred by such LC Issuer in performing its respective duties in any way related to or arising out of LC Issuances by it; *provided, however,* that no LC Participants shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements resulting from such LC Issuer's gross negligence or willful misconduct.

#### Section 2.06 Notice of Borrowing.

(a) Time of Notice. Each Borrowing of a Loan (other than a Continuation or Conversion) shall be made upon notice in the form provided for below which shall be provided by the Borrower to the Administrative Agent at its Notice Office not later than (i) in the case of each Borrowing of a Eurodollar Loan, 11:00 A.M. (local time at its Notice Office) at least three Business Days' prior to the date of such Borrowing, (ii) in the case of each Borrowing of a Base Rate Loan, prior to 11:00 A.M. (local time at its Notice Office) on the proposed date of such Borrowing, and (iii) in the case of any Borrowing under the Swing Line Facility, prior to 1:00 P.M. (local time at its Notice Office) on the proposed date of such Borrowing.

(b) Notice of Borrowing. Each request for a Borrowing (other than a Continuation or Conversion) shall be made by an Authorized Officer of the Borrower by delivering written notice of such request substantially in the form of Exhibit B-1 hereto (each such notice, a "Notice of Borrowing") or by telephone (to be confirmed immediately in writing by delivery by an Authorized Officer of the Borrower of a Notice of Borrowing), and in any event each such request shall be irrevocable and shall specify (i) the aggregate principal amount of the Loans to be made pursuant to such Borrowing, (ii) the date of the Borrowing (which shall be a Business Day), (iii) the Type of Loans such Borrowing will consist of, and (iv) if applicable, the initial Interest Period or the Swing Loan Maturity Date (which shall be less than seven days). Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower entitled to give telephonic notices under this Agreement on behalf of the Borrower. In each such case, the Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error.

(c) Minimum Borrowing Amount. The aggregate principal amount of each Borrowing by the Borrower shall not be less than the Minimum Borrowing Amount.

(d) Maximum Borrowings. More than one Borrowing may be incurred by the Borrower on any day; *provided, however,* that (i) if there are two or more Borrowings on a single day (other than with respect to a Term Borrowing made on the Closing Date) by the Borrower that consist of Eurodollar Loans, each such Borrowing shall have a different initial Interest Period, and (ii) at no time shall there be more than five Borrowings of Eurodollar Loans outstanding hereunder.

Section 2.07 Funding Obligations; Disbursement of Funds.

(a) Several Nature of Funding Obligations. The Commitments of each Lender hereunder and the obligation of each Lender to make Loans, acquire and fund Swing Loan Participations, and LC Participations, as the case may be, are several and not joint obligations. No Lender shall be responsible for any default by any other Lender in its obligation to make Loans or fund any participation hereunder and each Lender shall be obligated to make the Loans provided to be made by it and fund its participations required to be funded by it hereunder, regardless of the failure of any other Lender to fulfill any of its Commitments hereunder. Nothing herein and no subsequent termination of the Commitments pursuant to Section 2.12 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder and in existence from time to time or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(b) Borrowings Pro Rata. Except with respect to the making of Swing Loans by the Swing Line Lender, all Loans hereunder shall be made as follows: (i) all Revolving Loans made, and LC Participations acquired by each Lender, shall be made or acquired, as the case may be, on a *pro rata* basis based upon each Lender's Revolving Facility Percentage of the amount of such Revolving Borrowing or Letter of Credit in effect on the date the applicable Revolving Borrowing is to be made or the Letter of Credit is to be issued; and (ii) all Term Loans shall be made by the Lenders having Term Commitments *pro rata* on the basis of their respective Term Commitments.

(c) Notice to Lenders. The Administrative Agent shall promptly give each Lender, as applicable, written notice (or telephonic notice promptly confirmed in writing) of each proposed Borrowing, or Conversion or Continuation thereof, and LC Issuance, and of such Lender's proportionate share thereof or participation therein and of the other matters covered by the Notice of Borrowing, Notice of Continuation or Conversion, or LC Request, as the case may be, relating thereto.

(d) Funding of Loans.

(i) Loans Generally. No later than 2:00 P.M. (local time at the Payment Office) on the date specified in each Notice of Borrowing, each Lender will make available its amount, if any, of each Borrowing requested to be made on such date to the Administrative Agent at the Payment Office in Dollars and in immediately available funds and the Administrative Agent promptly will make available to the Borrower by depositing to its account at the Payment Office (or such other account as the Borrower shall specify) the aggregate of the amounts so made available in the type of funds received.

(ii) Swing Loans. No later than 2:00 P.M. (local time at the Payment Office) on the date specified in each Notice of Borrowing, the Swing Line Lender will make available to the Borrower by depositing to its account at the Payment Office (or such other account as the Borrower shall specify) the aggregate of Swing Loans requested in such Notice of Borrowing.

(e) Advance Funding. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made the same available to the Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent at a rate per annum equal to (i) if paid by such Lender, the overnight Federal Funds Effective Rate or (ii) if paid by the Borrower, the then applicable rate of interest, calculated in accordance with Section 2.09, for the respective Loans (but without any requirement to pay any amounts in respect thereof pursuant to Section 3.02).

Section 2.08 Evidence of Obligations.

(a) Loan Accounts of Lenders. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Obligations of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) Loan Accounts of Administrative Agent; Lender Register. The Administrative Agent shall maintain accounts in which it shall record: (i) the amount of each Loan and Borrowing made hereunder, the Type thereof, the currency in which such Loan is denominated, the Interest Period and applicable interest rate and, in the case of a Swing Loan, the Swing Loan Maturity Date applicable thereto; (ii) the amount and other details with respect to each Letter of Credit issued hereunder; (iii) the amount of any principal due and payable or to become due and payable from the Borrower to each Lender hereunder; (iv) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof; and (v) the other details relating to the Loans, Letters of Credit and other Obligations. In addition, the Administrative Agent shall maintain a register (the "Lender Register") on or in which it will record the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender, pursuant to the terms hereof from time to time. The entries in the Lender 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 Lender Register pursuant to the terms hereof as a Lender for all purposes of this Agreement. The Administrative Agent will make the Lender Register available to any Lender or the Borrower upon its request.

(c) Effect of Loan Accounts, etc. The entries made in the accounts maintained pursuant to Section 2.08(b) shall be *prima facie* evidence of the existence and amounts of the Obligations recorded therein; *provided*, that the failure of the Administrative Agent to maintain such accounts or any error (other than manifest error) therein shall not in any manner affect the obligation of any Credit Party to repay or prepay the Loans or the other Obligations in accordance with the terms of this Agreement.

(d) Notes. Upon request of any Lender or the Swing Line Lender, the Borrower will execute and deliver to such Lender or the Swing Line Lender, as the case may be, (i) a Revolving Facility Note with blanks appropriately completed in conformity herewith to evidence the Borrower's obligation to pay the principal of, and interest on, the Revolving Loans made to it by such Lender, (ii) a Term Note with blanks appropriately completed in conformity herewith to evidence its obligation to pay the principal of, and interest on, the Term Loan made to it by such Lender, and (iii) a Swing Line Note with blanks appropriately completed in conformity herewith to evidence the Borrower's obligation to pay the principal of, and interest on, the Swing Loans made to it by the Swing Line Lender; *provided, however*; that the decision of any Lender or the Swing Line Lender to not request a Note shall in no way detract from the Borrower's obligation to repay the Loans and other amounts owing by the Borrower to such Lender or the Swing Line Lender.

Section 2.09 Interest; Default Rate.

(a) Interest on Revolving Loans. The outstanding principal amount of each Revolving Loan made by each Lender shall bear interest at a fluctuating rate per annum that shall at all times be equal to (i) during such periods as such Revolving Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin in effect from time to time and (ii) during such periods as such Revolving Loan is a Eurodollar Loan, the relevant Adjusted Eurodollar Rate for such Eurodollar Loan for the applicable Interest Period plus the Applicable Margin in effect from time to time.

(b) Interest on Term Loans. The outstanding principal amount of each Term Loan made by each Lender shall bear interest at a fluctuating rate per annum that shall at all times be equal to (i) during such periods as such Term Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin in effect from time to time, and (ii) during such periods as such Term Loan is a Eurodollar Loan, the relevant Adjusted Eurodollar Rate for such Eurodollar Loan for the applicable Interest Period plus the Applicable Margin, in each case, as in effect from time to time.

(c) Interest on Swing Loans. The outstanding principal amount of each Swing Loan shall bear interest from the date of the Borrowing at a rate per annum that shall be equal to the Base Rate plus the Applicable Margin in effect from time to time.

(d) Default Interest. Notwithstanding the above provisions, if an Event of Default has occurred and is continuing, (i) the principal amount of all Loans outstanding and, to the extent permitted by applicable law, all overdue interest in respect of each Loan and all fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable Debtor Relief Laws) payable on demand, at a rate per annum equal to the Default Rate, and (ii) the LC Fees shall be increased by an additional 2% per annum in excess of the LC Fees otherwise applicable thereto. In addition, if any amount (other than amounts as to which the foregoing subparts (i) and (ii) are applicable) payable by the Borrower under the Loan Documents is not paid when due, upon written notice by the Administrative Agent (which notice the Administrative Agent may give in its discretion and shall give at the direction of the Required Lenders), such amount shall bear interest, payable on demand, at a rate per annum equal to the Default Rate.

(e) Accrual and Payment of Interest. Interest shall accrue from and including the date of any Borrowing to but excluding the date of any prepayment or repayment thereof and shall be payable by the Borrower: (i) in respect of each Base Rate Loan, quarterly in arrears on the last Business Day of each March, June, September and December; (ii) in respect of each Eurodollar Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on the dates that are successively three months after the commencement of such Interest Period; (iii) in respect of any Swing Loan, on the Swing Loan Maturity Date applicable thereto; and (iv) in respect of all Loans, other than Revolving Loans accruing interest at a Base Rate, on any repayment, prepayment or Conversion (on the amount repaid, prepaid or Converted), at maturity (whether by acceleration or otherwise), and, after such maturity or, in the case of any interest payable pursuant to Section 2.09(d), on demand.

(f) Computations of Interest. All computations of interest on Eurodollar Loans shall be made on the actual number of days elapsed over a year of 360 days. All computations of interest on Base Rate Loans and Unpaid Drawings hereunder shall be made on the actual number of days elapsed over a year of 365 or 366 days, as applicable.

(g) Information as to Interest Rates. The Administrative Agent, upon determining the interest rate for any Borrowing, shall promptly notify the Borrower and the Lenders thereof. Any changes in the Applicable Margin shall be determined by the Administrative Agent in accordance with the provisions set forth in the definition of "Applicable Margin" and the Administrative Agent will promptly provide notice of such determinations to the Borrower and the Lenders. Any such determination by the Administrative Agent shall be conclusive and binding absent manifest error.

(h) Effect of Benchmark Transition Event.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the Adjusted Eurodollar Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the Adjusted Eurodollar Rate with a Benchmark Replacement pursuant to this Section 2.09(h) will occur prior to the applicable Benchmark Transition Start Date.

(ii) 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.

(iii) 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 and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.09(h), 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, 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 hereto, except, in each case, as expressly required pursuant to this Section 2.09(h).

(iv) 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 Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon the Adjusted Eurodollar Rate will not be used in any determination of Base Rate.

## Section 2.10 Conversion and Continuation of Loans.

(a) Conversion and Continuation of Revolving Loans. The Borrower shall have the right, subject to the terms and conditions of this Agreement, to (i) Convert all or a portion of the outstanding principal amount of Loans of one Type made to it into a Borrowing or Borrowings of another Type of Loans that can be made to it pursuant to this Agreement and (ii) Continue a Borrowing of Eurodollar Loans at the end of the applicable Interest Period as a new Borrowing of Eurodollar Loans with a new Interest Period; *provided, however,* that any Conversion of Eurodollar Loans into Base Rate Loans shall be made on, and only on, the last day of an Interest Period for such Eurodollar Loans.

(b) Notice of Continuation and Conversion. Each Continuation or Conversion of a Loan shall be made upon notice in the form provided for below provided by the Borrower to the Administrative Agent at its Notice Office not later than (i) in the case of each Continuation of or Conversion into a Eurodollar Loan, prior to 11:00 A.M. (local time at its Notice Office) at least three Business Days' prior to the date of such Continuation or Conversion, and (ii) in the case of each Conversion to a Base Rate Loan, prior to 11:00 A.M. (local time at its Notice Office) on the proposed date of such Conversion. Each such request shall be made by an Authorized Officer of the Borrower delivering written notice of such request substantially in the form of Exhibit B-2 hereto (each such notice, a "Notice of Continuation or Conversion") or by telephone (to be confirmed immediately in writing by delivery by an Authorized Officer of the Borrower of a Notice of Continuation or Conversion), and in any event each such request shall be irrevocable and shall specify (A) the Borrowings to be Continued or Converted, (B) the date of the Continuation or Conversion (which shall be a Business Day), and (C) the Interest Period or, in the case of a Continuation, the new Interest Period. Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower entitled to give telephonic notices under this Agreement on behalf of the Borrower. In each such case, the Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error.

## Section 2.11 Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of each Lender based upon each such Lender's Revolving Facility Percentage, as consideration for the Revolving Commitments of the Lenders, commitment fees (the "Commitment Fees") for the period from the Closing Date to, but not including, the Revolving Facility Termination Date, computed for each day at a rate per annum equal to (i) the Applicable Margin times (ii) the Unused Total Revolving Commitment in effect on such day. Accrued Commitment Fees shall be due and payable in arrears on the last Business Day of each March, June, September and December and on the Revolving Facility Termination Date.

(b) LC Fees. (i) Standby Letters of Credit. The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of each Lender with a Revolving Commitment based upon each such Lender's Revolving Facility Percentage, a fee in respect of each Letter of Credit issued hereunder that is a Standby Letter of Credit for the period from the date of issuance of such Letter of Credit until the expiration date thereof (including any extensions of such expiration date that may be made at the election of the account party or the beneficiary), computed for each day at a rate per annum equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Loans in effect on such day times (B) the Stated Amount of such Letter of Credit on such day. The foregoing fees shall be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Revolving Facility Termination Date.

(ii) Commercial Letters of Credit. The Borrower agrees to pay to the Administrative Agent for the ratable benefit of each Lender based upon each such Lender's Revolving Facility Percentage, a fee in respect of each Letter of Credit issued hereunder that is a Commercial Letter of Credit in an amount equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Loans in effect on the date of issuance times (B) the Stated Amount of such Letter of Credit. The foregoing fees shall be payable on the date of issuance of such Letter of Credit.

(c) Fronting Fees. The Borrower agrees to pay directly to each LC Issuer, for its own account, a fee in respect of each Letter of Credit issued by it, payable on the date of issuance (or any increase in the amount, or renewal or extension) thereof, computed at the rate of 0.25% per annum on the Stated Amount thereof for the period from the date of issuance (or increase, renewal or extension) to the expiration date thereof (including any extensions of such expiration date which may be made at the election of the beneficiary thereof).

(d) Additional Charges of LC Issuer. The Borrower agrees to pay directly to each LC Issuer upon each LC Issuance, drawing under, or amendment, extension, renewal or transfer of, a Letter of Credit issued by it such amount as shall at the time of such LC Issuance, drawing under, amendment, extension, renewal or transfer be the processing charge that such LC Issuer is customarily charging for issuances of, drawings under or amendments, extensions, renewals or transfers of, letters of credit issued by it.

(e) Administrative Agent Fees. The Borrower shall pay to the Administrative Agent, on the Closing Date and thereafter, for its own account, the fees set forth in the Administrative Agent Fee Letter.

(f) Closing Date Fees. The Borrower shall pay to the Administrative Agent, on the Closing Date and thereafter, the fees set forth in the Fee Letter.

(g) Computations and Determination of Fees. All computations of Commitment Fees, LC Fees and other Fees hereunder shall be made on the actual number of days elapsed over a year of 360 days.

## Section 2.12 Termination and Reduction of Revolving Commitments.

(a) Mandatory Termination of Revolving Commitments. All of the Revolving Commitments shall terminate on the Revolving Facility Termination Date.

(b) Cash Collateral. If the Total Revolving Commitment is reduced to any amount that is less than the LC Outstandings, the Borrower shall immediately Cash Collateralize the LC Outstandings to the extent of such excess.

(c) Voluntary Termination of the Total Revolving Commitment. Upon at least three Business Days' prior irrevocable written notice (or telephonic notice confirmed in writing) (unless such notice expressly conditions such termination upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrower shall have the right to terminate in whole the Total Revolving Commitment, provided that (i) all outstanding Revolving Loans and Unpaid Drawings are contemporaneously prepaid in accordance with Section 2.13 and (ii) either there are no outstanding Letters of Credit or the Borrower shall contemporaneously cause all outstanding Letters of Credit to be surrendered for cancellation (any such Letters of Credit to be replaced by letters of credit issued by other financial institutions acceptable to each LC Issuer and the Revolving Lenders) or shall Cash Collateralize all LC Outstandings.

(d) Partial Reduction of Total Revolving Commitment. Upon at least three Business Days' prior irrevocable written notice (or telephonic notice confirmed in writing) (unless such notice expressly conditions such reduction upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrower shall have the right to partially and permanently reduce the Unused Total Revolving Commitment; *provided, however,* that (i) any such reduction shall apply to proportionately (based on each Lender's Revolving Facility Percentage) and permanently reduce the Revolving Commitment of each Lender, (ii) such reduction shall apply to proportionately and permanently reduce the LC Commitment Amount, but only to the extent that the Unused Total Revolving Commitment would be reduced below any such limits, (iii) no such reduction shall be permitted if the Borrower would be required to make a mandatory prepayment of Loans pursuant to Section 2.13(c)(ii) or (iii), and (iv) any partial reduction shall be in the amount of at least \$1,000,000 (or, if greater, in integral multiples of \$250,000).

Section 2.13 Voluntary, Scheduled and Mandatory Prepayments of Loans.

(a) Voluntary Prepayments. The Borrower shall have the right to prepay any of the Loans owing by it, in whole or in part, without premium or penalty, *except* as specified in subparts (d) and (e) below, from time to time. The Borrower shall give the Administrative Agent at the Notice Office written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) of its intent to prepay the Loans, the amount of such prepayment and (in the case of Eurodollar Loans) the specific Borrowing(s) pursuant to which the prepayment is to be made, which notice shall be received by the Administrative Agent by (y) 11:00 A.M. (local time at the Notice Office) three Business Days prior to the date of such prepayment, in the case of any prepayment of Eurodollar Loans, or (z) 11:00 A.M. (local time at the Notice Office) one Business Day prior to the date of such prepayment, in the case of any prepayment of Base Rate Loans, and which notice shall promptly be transmitted by the Administrative Agent to each of the affected Lenders, *provided* that:

(i) each partial prepayment shall be in an aggregate principal amount of at least (A) in the case of any prepayment of a Eurodollar Loan, \$1,000,000 (or, if less, the full amount of such Borrowing), or an integral multiple of \$500,000, (B) in the case of any prepayment of a Base Rate Loan, \$250,000 (or, if less, the full amount of such Borrowing), or an integral multiple of \$100,000, and (C) in the case of any prepayment of a Swing Loan, in the full amount thereof;

(ii) no partial prepayment of any Loans made pursuant to a Borrowing shall reduce the aggregate principal amount of such Loans outstanding pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount applicable thereto; and

(iii) in the case of any prepayment of Term Loans, such prepayment shall be applied *pro rata* to the Scheduled Repayments in respect of the Term Loans.

(b) Scheduled Repayments of Term Loans.

(i) Closing Date Term Loans. On each of the dates set forth below, the Borrower shall repay the principal amount of the Term Loans made on the Closing Date in the amount set forth opposite such date, *except* that the payment due on the Term Loan Maturity Date shall in any event be in the amount of the entire remaining principal amount of the outstanding Term Loans (each such repayment, as the same may be reduced by reason of the application of prepayments pursuant to Sections 2.13(a) and 2.13(c), a "Scheduled Repayment"):

| <b>Date</b>        | <b>Amount of Payment</b> |
|--------------------|--------------------------|
| September 30, 2020 | \$500,000                |
| December 31, 2020  | \$500,000                |
| March 31, 2021     | \$500,000                |
| June 30, 2021      | \$500,000                |
| September 30, 2021 | \$750,000                |
| December 31, 2021  | \$750,000                |
| March 31, 2022     | \$750,000                |
| June 30, 2022      | \$750,000                |
| September 30, 2022 | \$750,000                |
| December 31, 2022  | \$750,000                |
| March 31, 2023     | \$750,000                |
| June 30, 2023      | \$750,000                |
| September 30, 2023 | \$1,000,000              |
| December 31, 2023  | \$1,000,000              |
| March 31, 2024     | \$1,000,000              |
| June 30, 2024      | \$1,000,000              |
| September 30, 2024 | \$1,000,000              |
| December 31, 2024  | \$1,000,000              |
| March 31, 2025     | \$1,000,000              |
| June 22, 2025      | Remainder of Term Loans  |

(ii) **Incremental Loans.** In addition to the foregoing, the Borrower shall pay to the Administrative Agent, for the account of the Lenders, on each Incremental Term Loan Repayment Date, a principal amount of the Other Term Loans (as adjusted from time to time pursuant to Sections 2.13(a), 2.13(c) and 2.17(d)) equal to the amount set forth for such date in the applicable Incremental Term Loan Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. To the extent not previously paid, all Incremental Term Loans shall be due and payable on the applicable Incremental Term Loan Maturity Date and all Incremental Revolving Loans shall be due and payable on the applicable Revolving Facility Termination Date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) **Mandatory Payments.** The Loans shall be subject to mandatory repayment or prepayment (in the case of any partial prepayment conforming to the requirements as to the amounts of partial prepayments set forth in Section 2.13(a) above), and the LC Outstandings shall be subject to cash collateralization requirements, in accordance with the following provisions:

(i) **Revolving Facility Termination Date.** The entire principal amount of all outstanding Revolving Loans shall be repaid in full on the Revolving Facility Termination Date.

(ii) **Loans Exceed the Commitments.** If on any date (after giving effect to any other payments on such date) (A) the Aggregate Credit Facility Exposure exceeds the Total Credit Facility Amount, (B) the Revolving Facility Exposure of any Lender exceeds such Lender's Revolving Commitment, (C) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans exceeds the Total Revolving Commitment, or (D) the aggregate principal amount of Swing Loans outstanding exceeds the Swing Line Commitment, *then*, in the case of each of the foregoing, the Borrower shall, on such day, prepay on such date the principal amount of Loans and, after Loans have been paid in full, Unpaid Drawings, in an aggregate amount at least equal to such excess.

(iii) **LC Outstandings Exceed LC Commitment.** If on any date the LC Outstandings exceed the LC Commitment Amount, *then* the applicable LC Obligor or the Borrower shall, on such day, Cash Collateralize the LC Outstandings to the extent of such excess.

(iv) **Excess Cash Flow.** Within 90 days after each fiscal year of the Borrower, commencing with the financial statements of the Borrower for the fiscal year ended December 31, 2021, the Borrower shall prepay the principal of the Loans in an aggregate amount (an "Excess Cash Flow Prepayment Amount") equal to the sum of (A) Excess Cash Flow times (B) the percentage of the Excess Cash Flow for such fiscal year computed in accordance with the table set forth below based on the Consolidated Leverage Ratio as of the end of such fiscal year, with such amount to be applied as set forth in Section 2.13(d) below:

| <u><b>Consolidated Leverage Ratio</b></u> | <u><b>Percentage of Excess Cash Flow</b></u> |
|---|--|
| Greater than or equal to 2.75 to 1.00     | 50%  |
| Less than 2.75 to 1.00                    | 0%   |

(v) **Certain Proceeds of Asset Sales.** If during any fiscal year of the Borrower, the Borrower and its Subsidiaries have received cumulative Net Cash Proceeds during such fiscal year from one or more Asset Sales of at least \$5,000,000, not later than the third Business Day following the date of receipt of any Cash Proceeds in excess of such amount, an amount equal to 100% of the Net Cash Proceeds then received in excess of such amount from any Asset Sale shall be applied as a mandatory prepayment of the Loans in accordance with Section 2.13(d) below; *provided*, that (A) if no Default or Event of Default shall have occurred and be continuing, (B) the Borrower and its Subsidiaries have committed to reinvest such Net Cash Proceeds in the acquisition of assets useful to the business of Borrower and its Subsidiaries within 365 days of receipt of such Net Cash Proceeds, and if so committed to reinvestment pursuant to a legally binding contract within such 365-day period, reinvested within 180 days after the end of such 365-day period, and (C) the Borrower notifies the Administrative Agent of the amount and nature thereof and of its intention to reinvest all or a portion of such Net Cash Proceeds in such Consolidated Capital Expenditures during such 365 day period, then no such prepayment shall be required. Any amounts not so applied to such reinvestment or as provided in Section 8.03 shall be applied to the prepayment of the Loans as provided in Section 2.13(d) below. If at the end of any such 365 day (or 545-day) period any portion of such Net Cash Proceeds has not been so reinvested, the Borrower will immediately make a prepayment of the Loans, to the extent required above.

(vi) [Reserved].

(vii) Certain Proceeds of Indebtedness. Not later than the Business Day following the date of the receipt by any Credit Party of the cash proceeds (net of underwriting discounts and commissions, placement agent fees and other customary fees and costs associated therewith) from any sale or issuance of any Indebtedness (other than any Indebtedness incurred pursuant to Section 7.04 after the Closing Date), the Borrower will make a prepayment of the Loans in an amount equal to 100% of such Net Cash Proceeds in accordance with Section 2.13(d) below.

(viii) Certain Proceeds of an Event of Loss. If during any fiscal year of the Borrower, any Credit Party has received cumulative Net Cash Proceeds during such fiscal year from one or more Events of Loss of at least \$5,000,000, not later than the third Business Day following the date of receipt of any Net Cash Proceeds in excess of such amount, the Borrower will make a prepayment of the Loans with an amount equal to 100% of the Net Cash Proceeds then received in excess of such amount from any Event of Loss in accordance with Section 2.13(d) below. Notwithstanding the foregoing, in the event any property suffers an Event of Loss and (A) the Net Cash Proceeds received in any fiscal year as a result of such Event of Loss are less than \$10,000,000, (B) no Default or Event of Default has occurred and is continuing, and (C) the Borrower notifies the Administrative Agent and the Lenders in writing that it intends to replace, rebuild or restore the affected property, that such rebuilding or restoration can be accomplished within 365 days out of such Cash Proceeds and other funds available to the Borrower (which 365-day period shall be extended for an additional 180 days to the extent Borrower has entered into a legally binding agreement to reinvest such Net Cash Proceeds within such 365-day period), *then* no such prepayment of the Loans shall be required if the Borrower immediately deposits such Net Cash Proceeds in a cash collateral deposit account subject to a control agreement in favor of Administrative Agent, and which shall constitute part of the Collateral under the Security Documents and may be applied as provided in Section 8.03 if an Event of Default occurs and is continuing. If at the end of any such 365 day (or 545-day) period any portion of such Net Cash Proceeds from Events of Loss has not been so used to replace, rebuild or restore the affected property, the Borrower will immediately make a prepayment of the Loans, to the extent required above. So long as no Default or Event of Default has occurred and is continuing, the Administrative Agent is authorized to disburse amounts from such cash collateral deposit account to or at the direction of the Borrower for application to the costs of rebuilding or restoration of the affected property. Any amounts not so applied to the costs of rebuilding or restoration or as provided in Section 8.03 shall be applied to the prepayment of the Loans as provided in Section 2.13(d) below.

(d) Applications of Certain Prepayment Proceeds. Each prepayment required to be made pursuant to Section 2.13(c)(iv), (v), (vii) or (viii), above shall be applied as a mandatory prepayment of principal of *first*, the outstanding Term Loans, with such amounts being applied to the Scheduled Repayments (including the final payment) thereof in the inverse order of their maturity, *second*, after no Term Loans are outstanding, the outstanding Swing Loans, and *third*, the outstanding Revolving Loans, and the Total Revolving Commitment shall not be permanently reduced on the date of any such prepayment by an amount equal to such prepayment in accordance with Section 2.12(b) and the LC Outstanding shall be Cash Collateralized to the extent required by Section 2.12(b).

(e) Particular Loans to be Prepaid. With respect to each repayment or prepayment of Loans made or required by this Section, the Borrower shall designate the Types of Loans that are to be repaid or prepaid and the specific Borrowing(s) pursuant to which such repayment or prepayment is to be made; *provided, however,* that (i) the Borrower shall first so designate all Loans that are Base Rate Loans and Eurodollar Loans with Interest Periods ending on the date of repayment or prepayment prior to designating any other Eurodollar Loans for repayment or prepayment, and (ii) if the outstanding principal amount of Eurodollar Loans made pursuant to a Borrowing is reduced below the applicable Minimum Borrowing Amount as a result of any such repayment or prepayment, then all the Loans outstanding pursuant to such Borrowing shall, in the case of Eurodollar Loans, be Converted into Base Rate Loans. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion with a view, but no obligation, to minimize breakage costs owing under Article III.

(f) [Reserved]

(g) Breakage and Other Compensation. Any prepayment made pursuant to this Section 2.13 shall be accompanied by any amounts payable in respect thereof under Article III hereof.

Section 2.14 Method and Place of Payment.

(a) Generally. All payments made by the Borrower hereunder (including any payments made with respect to the Borrower Guaranteed Obligations under Article X) under any Note or any other Loan Document shall be made without setoff, counterclaim or other defense.

(b) Application of Payments. Except as specifically set forth elsewhere in this Agreement and subject to Section 8.03, (i) all payments and prepayments of Revolving Loans and Unpaid Drawings with respect to Letters of Credit shall be applied by the Administrative Agent on a *pro rata* basis based upon each Lender's Revolving Facility Percentage of the amount of such prepayment, (ii) all payments and prepayments of Term Loans shall be applied by the Administrative Agent to reduce the principal amount of the Term Loans made by each Lender with a Term Commitment, *pro rata* on the basis of their respective Term Commitments, and (iii) all payments or prepayments of Swing Loans shall be applied by the Administrative Agent to pay or prepay such Swing Loans.

(c) Payment of Obligations. Except as specifically set forth elsewhere in this Agreement, all payments under this Agreement with respect to any of the Obligations shall be made to the Administrative Agent on the date when due and shall be made at the Payment Office in immediately available funds and, except as set forth in the next sentence, shall be made in Dollars.

(d) Timing of Payments. Any payments under this Agreement that are made later than 2:00 P.M. (local time at the Payment Office) shall be deemed to have been made on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

(e) Distribution to Lenders. Upon the Administrative Agent's receipt of payments hereunder, the Administrative Agent shall immediately distribute to each Lender or the applicable LC Issuer, as the case may be, its ratable share, if any, of the amount of principal, interest, and Fees received by it for the account of such Lender. Payments received by the Administrative Agent in Dollars shall be delivered to the Lenders or the applicable LC Issuer, as the case may be, in Dollars in immediately available funds; *provided, however,* that if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Unpaid Drawings, interest and Fees then due hereunder then, except as specifically set forth elsewhere in this Agreement and subject to Section 8.03, such funds shall be applied, *first*, towards 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 *second*, towards payment of principal and Unpaid Drawings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Unpaid Drawings then due to such parties.

Section 2.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.03 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 such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any LC Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the LC Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such 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 deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the LC Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16; *sixth*, to the payment of any amounts owing to the Lenders, the LC Issuers or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the LC Issuers or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of 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 such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such 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 reimbursement of any payment on any Letter of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans or reimbursement of any payment on any Letter of Credit were made or the related Letters of Credit were issued 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 LC Outstandings owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or LC Outstandings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Outstandings and Swing Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Credit Facilities without giving effect to Section 2.15(a)(iv). 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 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. (A) No Defaulting Lender shall be entitled to receive any Commitment Fee 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).

(B) Each Defaulting Lender shall be entitled to receive LC Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Facility Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16.

(C) With respect to any LC Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to the Administrative Agent for the ratable benefit of each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Outstandings or Swing Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each LC Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such LC Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Outstandings and Swing Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Facility Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Facility Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. 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.

(v) Cash Collateral, Repayment of Swing Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swing Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the LC Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.16.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each Swing Line Lender and LC Issuer agree in writing that a Lender is no longer 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 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 and Swing Loans to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 2.15(a)(iv), whereupon such 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 Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Loan and (ii) no LC Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

#### Section 2.16 Cash Collateral.

(a) Fronting Exposure. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any LC Issuer (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize the LC Issuers' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the LC Issuers, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Outstandings, to be applied pursuant to clause (b) below. 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 and the LC Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower 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 (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.16 or Section 2.15 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Outstandings (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.16 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each LC Issuer that there exists excess Cash Collateral; *provided* that, subject to Section 2.15, the Person providing Cash Collateral and each LC Issuer may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and *provided, further* that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

#### Section 2.17 Increase in Commitments.

(a) The Borrower may, by written notice to the Administrative Agent at any time after the Closing Date and prior to the Term Loan Maturity Date, request on one or more occasions, up to three in the aggregate, Incremental Term Loan Commitments and/or Incremental Revolving Credit Commitments in an aggregate principal amount not to exceed \$30,000,000, provided that the aggregate amount of all Incremental Revolving Credit Commitments shall not exceed \$10,000,000 from one or more Incremental Term Lenders or Incremental Revolving Credit Lenders, as applicable, which may include any existing Lender (each of which shall be entitled to agree or decline to participate in its sole discretion); *provided*, that each Incremental Term Lender and Incremental Revolving Credit Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent in its reasonable discretion. Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments or the Incremental Revolving Credit Commitments being requested (which shall be in minimum increments of \$1,000,000), (ii) the date on which such Incremental Term Loan Commitments or Incremental Revolving Credit Commitments are requested to become effective (which shall not be less than 15 days nor more than 60 days after the date of such notice, unless otherwise agreed to by the Administrative Agent) and (iii) whether such Incremental Term Loan Commitments are to be Term Commitments or commitments to make term loans with terms different from the Term Loans ("Other Term Loans"). Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that all Incremental Revolving Credit Commitments are to be Revolving Commitments and based on the terms and conditions set forth herein for Revolving Commitments and Revolving Loans.

(b) The Borrower may seek Incremental Term Loan Commitments and Incremental Revolving Credit Commitments from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion and additional banks, financial institutions and other institutional lenders who will become Incremental Term Lenders and/or Incremental Revolving Credit Lenders, as applicable, in connection therewith. The Borrower and each Incremental Term Lender shall execute and deliver to the Administrative Agent an Incremental Term Loan Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loan Commitment of such Incremental Term Lender. The Borrower and each Incremental Revolving Credit Lender shall execute and deliver to the Administrative Agent an Incremental Revolving Credit Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Revolving Credit Commitment of such Incremental Revolving Credit Lender. Each Incremental Term Loan Assumption Agreement and Incremental Revolving Credit Assumption Agreement shall specify the terms of the Incremental Term Loans or Incremental Revolving Loans, as applicable, to be made thereunder; *provided*, that, without the prior written consent of the Required Lenders, (i) the final maturity date of any Other Term Loans shall be no earlier than the Term Loan Maturity Date and (ii) the average life to maturity of any Other Term Loans shall be no shorter than the weighted average life to maturity of the Term Loans, and *provided, further*, that, if the Initial Yield on such Other Term Loans exceeds by more than 50 basis points the sum of (A) the margin then in effect for Term Loans that are Eurodollar Loans plus (B) one-quarter of the amount of such upfront fee initially paid in respect of the Term Loans (the amount of such excess above 50 basis points being referred to herein as the “Yield Differential”), then the Applicable Margin then in effect for each such affected Type of Term Loans shall automatically be increased by the Yield Differential, effective upon the making of the Other Term Loans. As used in the prior sentence, “Initial Yield” shall, as determined by the Administrative Agent, be equal to the sum of (x) the margin above the Adjusted Eurodollar Rate on such Other Term Loans (which shall be increased by the amount any “LIBOR floor” applicable to such Other Term Loans on the date such Other Term Loans are made exceeds the Adjusted Eurodollar Rate) plus (y) if the Lenders making such Other Term Loans receive any upfront fee or similar fees (including original issue discount where the amount of such discount is equated to interest based on an assumed four year life to maturity or, if the actual maturity date falls earlier than four years, the lesser number of years, but excluding any arrangement, underwriting, structuring or similar fees) directly or indirectly from the Borrower or any Subsidiary, the amount of such upfront fee or similar divided by the lesser of (A) the average life to maturity of such Other Term Loans and (B) four. The other terms of the Incremental Term Loans and the Incremental Term Loan Assumption Agreement to the extent not consistent with the terms applicable to the Term Loans hereunder shall otherwise be reasonably satisfactory to the Administrative Agent and, to the extent that such Incremental Term Loan Assumption Agreement contains any covenants, events of default, representations or warranties or other rights or provisions that place greater restrictions on the Borrower or any of their respective Subsidiaries that are more favorable to the Lenders making such Other Term Loans, the existing Lenders shall be entitled to the benefit of such rights and provisions so long as such Other Term Loans remain outstanding and such additional rights and provisions shall be deemed automatically incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein, without any further action required on the part of any Person effective as of the date of such Incremental Term Loan Assumption Agreement. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Assumption Agreement and Incremental Revolving Credit Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Term Loan Assumption Agreement or Incremental Revolving Credit Assumption Agreement, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitment or Incremental Revolving Credit Commitment, as applicable, evidenced thereby as provided for in Section 11.12. Any such deemed amendment may be memorialized in writing by the Administrative Agent and the Borrower (any such amendment, an “Incremental Amendment”) and furnished to the other parties hereto, without requiring the consent of any other Lender, other than the Lenders providing such Incremental Term Loan Commitments or Incremental Revolving Credit Commitments.

(c) All Incremental Term Loans shall rank *pari passu* in right of payment and security with the initial Term Loans and shall be guaranteed by the Guarantors.

(d) Notwithstanding the foregoing, no Incremental Term Loan Commitment or Incremental Revolving Credit Commitment shall become effective under this Section 2.17 unless (i) on the date of such effectiveness, the conditions set forth in Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower, (ii) the Administrative Agent shall have received legal opinions, board resolutions and other closing certificates and documentation consistent with those delivered on the Closing Date, and (iii) the Borrower would be in pro forma compliance with the covenants set forth in Section 7.07.

(e) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans (other than Other Term Loans), when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis, and the Borrower agrees that Section 3.02 shall apply to any conversion of Eurodollar Loans which are Term Loans to Base Rate Loans reasonably required by the Administrative Agent to effect the foregoing. In addition, to the extent any Incremental Term Loans are not Other Term Loans, the scheduled amortization payments set forth in Section 2.13(b) required to be made after the making of such Incremental Term Loans shall be ratably increased by the aggregate principal amount of such Incremental Term Loans.

(f) Each Incremental Revolving Loan shall contain terms and provisions identical to the terms and conditions applicable to the Revolving Facility.

### ARTICLE III.

#### INCREASED COSTS, ILLEGALITY AND TAXES

##### Section 3.01 Increased Costs, Illegality, etc.

(a) In the event that (y) in the case of clause (i) below, the Administrative Agent or (z) in the case of clauses (ii) and (iii) below, any Lender or other Recipient, shall have determined on a reasonable basis (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the interest rate applicable to any Eurodollar Loan for any Interest Period that, by reason of any changes arising after the Closing Date, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in this Agreement for such Eurodollar Loan; or

(ii) at any time, that such Lender or other Recipient shall incur increased costs or reductions in the amounts received or receivable by it hereunder in an amount that such Lender or other Recipient deems material with respect to any Eurodollar Loans (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of any (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) because of (x) any Change in Law since the Closing Date (including, but not limited to, a change in requirements for any reserve, special deposit, liquidity or similar requirements (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or other Recipient, but, in all events, excluding reserves already includable in the interest rate applicable to such Eurodollar Loan pursuant to this Agreement) or (y) other circumstances adversely affecting the London interbank market or the position of such Lender or other Recipient in any such market; or

(iii) at any time, that the making or continuance of any Eurodollar Loan has become unlawful by compliance by such Lender in good faith with any Change in Law since the Closing Date, or would conflict with any thereof not having the force of law but with which such Lender customarily complies, or has become impracticable as a result of a contingency occurring after the Closing Date that materially adversely affects the London interbank market;

then, and in each such event, such Lender or other Recipient (or the Administrative Agent in the case of clause (i) above) shall (1) on or promptly following such date or time and (2) within 10 Business Days of the date on which such event no longer exists give notice (by telephone confirmed in writing) to the Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders or other Recipients). Thereafter (x) in the case of clause (i) above, the affected Type of Eurodollar Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Lenders or other Recipients that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Continuation or Conversion given by the Borrower with respect to such Type of Eurodollar Loans that have not yet been incurred, Converted or Continued shall be deemed rescinded by the Borrower or, in the case of a Notice of Borrowing, shall, at the option of the Borrower, be deemed converted into a Notice of Borrowing for Base Rate Loans to be made on the date of Borrowing contained in such Notice of Borrowing, (y) in the case of clause (ii) above, the Borrower shall pay to such Lender or other Recipient, upon written demand therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender or other Recipient shall determine) as shall be required to compensate such Lender or other Recipient for such increased costs or reductions in amounts receivable hereunder (a written notice as to the additional amounts owed to such Lender or other Recipient, showing the basis for the calculation thereof, which basis must be reasonable, submitted to the Borrower by such Lender or other Recipient shall, absent manifest error, be final and conclusive and binding upon all parties hereto) and (z) in the case of clause (iii) above, the Borrower shall take one of the actions specified in Section 3.01(b) as promptly as possible and, in any event, within the time period required by law.

(b) At any time that any Eurodollar Loan is affected by the circumstances described in Section 3.01(a)(ii) or (iii), the Borrower may (and in the case of a Eurodollar Loan affected pursuant to Section 3.01(a)(iii) the Borrower shall) either (i) if the affected Eurodollar Loan is then being made pursuant to a Borrowing, by giving the Administrative Agent telephonic notice (confirmed promptly in writing) thereof on the same date that the Borrower was notified by a Lender or other Recipient pursuant to Section 3.01(a)(ii) or (iii), cancel said Borrowing, or, in the case of any Borrowing, convert the related Notice of Borrowing into one requesting a Borrowing of Base Rate Loans or require the affected Lender or other Recipient to make its requested Loan as a Base Rate Loan, or (ii) if the affected Eurodollar Loan is then outstanding, upon at least one Business Day's notice to the Administrative Agent, require the affected Lender or other Recipient to Convert each such Eurodollar Loan into a Base Rate Loan; *provided, however,* that if more than one Lender or other Recipient is affected at any time, then all affected Lenders or other Recipients must be treated the same pursuant to this Section 3.01(b).

(c) If any Lender shall have determined that after the Closing Date, any Change in Law regarding capital adequacy or liquidity by any Governmental Authority, central bank or comparable agency charged by law with the interpretation or administration thereof, or compliance by such Lender or its parent corporation with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank, or comparable agency, in each case made subsequent to the Closing Date, has or would have the effect of reducing by an amount reasonably deemed by such Lender to be material to the rate of return on such Lender's or its parent corporation's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent corporation could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's or its parent corporation's policies with respect to capital adequacy and liquidity), then from time to time, within 15 days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent corporation for such reduction. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 3.01(c), will give prompt written notice thereof to the Borrower, which notice shall set forth, in reasonable detail, the basis of the calculation of such additional amounts, which basis must be reasonable, although the failure to give any such notice shall not release or diminish any of the Borrower's obligations to pay additional amounts pursuant to this Section 3.01(c) upon the subsequent receipt of such notice.

(d) Notwithstanding the foregoing, the provisions of Section 2.09(h) shall apply with respect to a Benchmark Transaction Event or an Early Opt-In Election.

**Section 3.02 Breakage Compensation.** The Borrower shall compensate each Lender (including the Swing Line Lender), upon its written request (which request shall set forth the detailed basis for requesting and the method of calculating such compensation), for all reasonable losses, costs, expenses and liabilities (including, without limitation, any loss, cost, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its Eurodollar Loans or Swing Loans) which such Lender may sustain in connection with any of the following: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of Eurodollar Loans or Swing Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Continuation or Conversion (whether or not withdrawn by the Borrower or deemed withdrawn pursuant to Section 3.01(a)); (ii) if any repayment, prepayment, Conversion or Continuation of any Eurodollar Loan occurs on a date that is not the last day of an Interest Period applicable thereto or any Swing Loan is paid prior to the Swing Loan Maturity Date applicable thereto; (iii) if any prepayment of any of its Eurodollar Loans is not made on any date specified in a notice of prepayment given by the Borrower; (iv) as a result of an assignment by a Lender of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto pursuant to a request by the Borrower pursuant to Section 3.05(b); or (v) as a consequence of (y) any other default by the Borrower to repay or prepay any Eurodollar Loans when required by the terms of this Agreement or (z) an election made pursuant to Section 3.05(b). The written request of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such request within 10 days after receipt thereof.

Section 3.03 Net Payments.

(a) Defined Terms. For purposes of this Section 3.03, the term “Lender” includes any LC Issuer and the term “applicable law” includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by 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 law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 11.06(b) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, 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. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 3.03, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent or prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.03(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable, 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 IRS Form W-8BEN-E as applicable, 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 originals 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 L-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(E) On or prior to the date on which such the Administrative Agent becomes a party to this Agreement and at such other times reasonably requested by the Borrower, the Administrative Agent shall (A) if the Administrative Agent is a U.S. Person, deliver to Borrower an IRS Form W-9 properly executed by the Administrative Agent, or (B) if the Administrative Agent is not a U.S. Person, deliver to Borrower the applicable IRS Form W-8 properly executed by the Administrative Agent and certifying the Administrative Agent's complete exemption from U.S. withholding Taxes with respect to amounts payable under the Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.03 (including by the payment of additional amounts pursuant to this Section 3.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 3.03 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.04 Increased Costs to LC Issuers. If after the Closing Date, there is a Change in Law by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any LC Issuer or any Lender with any request or directive (whether or not having the force of law) by any such authority, central bank or comparable agency (in each case made subsequent to the Closing Date) shall either (i) impose, modify or make applicable any reserve, deposit, capital adequacy or similar requirement against Letters of Credit issued by such LC Issuer or such Lender's participation therein, or (ii) impose on such LC Issuer or any Lender any other conditions affecting this Agreement, any Letter of Credit or such Lender's participation therein; and the result of any of the foregoing is to increase the cost to such LC Issuer or such Lender of issuing, maintaining or participating in any Letter of Credit, or to reduce the amount of any sum received or receivable by such LC Issuer or such Lender hereunder (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of taxes or similar charges), then, upon demand to the Borrower by such LC Issuer or such Lender (a copy of which notice shall be sent by such LC Issuer or such Lender to the Administrative Agent), the Borrower shall pay to such LC Issuer or such Lender such additional amount or amounts as will compensate any such LC Issuer or such Lender for such increased cost or reduction. A certificate submitted to the Borrower by any LC Issuer or any Lender, as the case may be (a copy of which certificate shall be sent by such LC Issuer or such Lender to the Administrative Agent), setting forth, in reasonable detail, the basis for the determination of such additional amount or amounts necessary to compensate any LC Issuer or such Lender as aforesaid shall be conclusive and binding on the Borrower absent manifest error, although the failure to deliver any such certificate shall not release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 3.04.

Section 3.05 Change of Lending Office; Replacement of Lenders.

(a) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a)(ii) or (iii), 3.01(c), 3.03 or 3.04 requiring the payment of additional amounts to the Lender, such Lender will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another Applicable Lending Office for any Loans or Commitments affected by such event; *provided, however,* that such designation is made on such terms that such Lender and its Applicable Lending Office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests any compensation, reimbursement or other payment under Section 3.01(a)(ii) or (iii), 3.01(c) or 3.04 with respect to such Lender, (ii) the Borrower is, or because of a matter in existence as of the date that the Borrower is seeking to exercise its rights under this Section will be, required to pay any additional amount to any Lender or Governmental Authority pursuant to Section 3.03, or (iii) 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 the restrictions contained in Section 11.06(c)), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations; *provided, however,* that (1) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed, (2) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Section 3.02 hereof), and (3) in the case of any such assignment resulting from a claim for compensation, reimbursement or other payments required to be made under Section 3.01(a)(ii) or (iii), Section 3.01(c) or Section 3.04 with respect to such Lender, or resulting from any required payments to any Lender or Governmental Authority pursuant to Section 3.03, such assignment will result in a reduction in such compensation, reimbursement or payments. A Lender shall not be required to make any such assignment and 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.

(c) Nothing in this Section 3.05 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Section 3.01, 3.03 or 3.04.

ARTICLE IV.

CONDITIONS PRECEDENT

Section 4.01 Conditions Precedent at Closing Date. The obligation of the Lenders to make Loans, and of any LC Issuer to issue Letters of Credit, is subject to the satisfaction of each of the following conditions on or prior to the Closing Date:

- (i) Credit Agreement. This Agreement shall have been executed by the Borrower, the Administrative Agent, each LC Issuer and each of the Lenders.
- (ii) Notes. The Borrower shall have executed and delivered to the Administrative Agent the appropriate Note or Notes for the account of each Lender that has requested the same.
- (iii) Security Agreement. The Credit Parties shall have duly executed and delivered a Pledge and Security Agreement (the “Security Agreement”), in form and substance reasonably acceptable to the Administrative Agent, and shall have executed and delivered all of the following in connection therewith, each of which shall be in form and substance satisfactory to the Administrative Agent: (A) the Collateral Assignment required pursuant to the terms of the Security Agreement, (B) a Perfection Certificate, and (C) each other Security Document that is required by this Agreement or the Security Agreement.

(iv) Fees and Fee Letters. The Borrower shall have (A) executed and delivered to the Administrative Agent, the Administrative Agent Fee Letter and shall have paid to the Administrative Agent, for its own account, the fees required to be paid by it on the Closing Date, (B) executed and delivered to the Administrative Agent, the Fee Letter and shall have paid to the Administrative Agent, for the benefit of the Lenders, the fees required to be paid therein, and (C) paid or caused to be paid all reasonable fees and expenses of the Administrative Agent and of special counsel to the Administrative Agent that have been invoiced on or prior to the Closing Date in connection with the preparation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby.

(v) Corporate Resolutions and Approvals. The Administrative Agent shall have received certified copies of the resolutions of the Board of Directors (or similar governing body) of each Credit Party approving the Loan Documents to which such Credit Party is or may become a party, and of all documents evidencing other necessary corporate or other organizational action, as the case may be, and governmental approvals, if any, with respect to the execution, delivery and performance by such Credit Party of Transactions and the Loan Documents to which it is or may become a party and the expiration of all applicable waiting periods, all of which documents to be in form and substance satisfactory to the Administrative Agent.

(vi) Incumbency Certificates. The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of each Credit Party certifying the names and true signatures of the officers of such Credit Party authorized to sign the Loan Documents to which such Credit Party is a party and any other documents to which such Credit Party is a party that may be executed and delivered in connection herewith.

(vii) Opinions of Counsel. The Administrative Agent shall have received such opinions of counsel from counsel to the Credit Parties, which opinion shall be addressed to the Administrative Agent and the Lenders and dated the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent.

(viii) Recordation of Security Documents, Delivery of Collateral, Taxes, etc. The Security Documents (or proper notices or UCC financing statements in respect thereof) shall have been duly recorded, published and filed in such manner and in such places as is required by law to establish, perfect, preserve and protect the rights, Liens and security interests of the parties thereto and their respective successors and assigns, all Collateral items required to be physically delivered to the Administrative Agent thereunder shall have been so delivered, accompanied by any appropriate instruments of transfer, and all taxes, fees and other charges then due and payable in connection with the execution, delivery, recording, publishing and filing of such instruments and the issuance of the Obligations and the delivery of the Notes shall have been paid in full.

(ix) Evidence of Insurance. The Administrative Agent shall have received certificates of insurance and other evidence satisfactory to it of compliance with the insurance requirements of this Agreement and the Security Documents.

(x) Search Reports. The Administrative Agent shall have received the results of UCC and other search reports from one or more commercial search firms acceptable to the Administrative Agent, listing all of the effective financing statements filed against any Credit Party, together with copies of such financing statements.

(xi) Corporate Charter and Good Standing Certificates. The Administrative Agent shall have received: (A) an original certified copy of the Certificate or Articles of Incorporation or equivalent formation document of each Credit Party and any and all amendments and restatements thereof, certified as of a recent date by the relevant Secretary of State; and (B) an original “long-form” good standing certificate or certificate of existence from the Secretary of State of the state of incorporation, dated as of a recent date, listing all charter documents affecting such Credit Party and certifying as to the good standing of such Credit Party.

(xii) Closing Certificate. The Administrative Agent shall have received a Closing Certificate, dated the Closing Date, of an Authorized Officer, to the effect that, at and as of the Closing Date, both before and after giving effect to the initial Borrowings hereunder and the application of the proceeds thereof: (i) the Closing Date Acquisition Documentation is in full force and effect in the form attached to such certificate and has not been amended, supplemented or otherwise modified; (ii) no Default or Event of Default has occurred or is continuing; and (iii) both before and immediately after giving effect to the Closing Date Acquisition, all representations and warranties of each Credit Party set forth in each Loan Document to which any Credit Party is a party are true and correct. All documents attached to the Closing Certificate shall be in form and substance satisfactory to the Administrative Agent.

(xiii) Financial Statements. The Administrative Agent shall have received (i) financial projections through the Maturity Date in form and substance satisfactory to the Administrative Agent, (ii) a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Borrower as of and for the twelve-month period ending on March 31, 2020, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income), (iii) audited consolidated balance sheet of the Seller and related statements of income, retained earnings, and members’ equity and changes in financial position of the Seller as of the end of and for the fiscal years ended December 31, 2018 and December 31, 2019, and (iv) unaudited consolidated balance sheets and related consolidated statements of income, retained earnings, and members’ equity as of March 31, 2020.

(xiv) Solvency Certificate. The Administrative Agent shall have received a solvency certificate in substantially the form attached hereto as Exhibit D, dated as of the Closing Date, and executed by a Financial Officer of the Borrower.

(xv) [Reserved].

(xvi) Payment of Outstanding Indebtedness, etc. The Administrative Agent shall have received evidence that immediately after the making of the Loans on the Closing Date, all Indebtedness under the Existing Credit Agreement and any other Indebtedness not permitted by Section 7.04, together with all interest, all payment premiums and all other amounts due and payable with respect thereto, shall be paid in full from the proceeds of the initial Credit Event, and the commitments in respect of such Indebtedness shall be permanently terminated, and all Liens securing payment of any such Indebtedness shall be released and the Administrative Agent shall have received all payoff and release letters, Uniform Commercial Code Form UCC-3 termination statements or other instruments or agreements as may be suitable or appropriate in connection with the release of any such Liens.

(xvii) Closing Date Acquisition; Closing Date Acquisition Documentation. The Administrative Agent shall have received a certified copy of the Closing Date Acquisition Documentation, which shall be in form and substance satisfactory to the Administrative Agent. The Administrative Agent shall have received evidence satisfactory to it that the Closing Date Acquisition will be consummated in accordance with the terms of the Closing Date Acquisition Agreement (without any amendment thereto or waiver thereunder that is adverse to the Lenders unless approved in writing by the Administrative Agent) immediately after the making of the Loans on the Closing Date and in compliance with applicable law and regulatory approvals.

(xviii) No Material Adverse Change. As of the Closing Date, no condition or event shall have occurred since December 31, 2019 that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect change, in the reasonable judgment of the Administrative Agent, in or affecting the business, operations, property or condition (financial or otherwise) of the Borrower or of the Borrower and the other Credit Parties taken as a whole; provided that impacts of COVID-19 on the business, operations or financial conditions of the Borrower and its Subsidiaries that occurred and were disclosed to the Administrative Agent, Lenders and Arrangers on or before the Closing Date will be disregarded.

(xix) Know Your Customer Information Act. The Administrative Agent shall have received, at least five Business Days prior to the Closing Date, (i) all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act and (ii) information regarding the Beneficial Owners of the Borrower requested by the Administrative Agent, including without limitation, the complete legal names, addresses of residence, date of birth, social security number and/or tax identification number of each such Beneficial Owner.

Section 4.02 Conditions Precedent to All Credit Events. The obligations of the Lenders, the Swing Line Lender and each LC Issuer to make or participate in each Credit Event is subject, at the time thereof, to the satisfaction of the following conditions:

(a) Notice. The Administrative Agent (and in the case of subpart (iii) below, the applicable LC Issuer) shall have received, as applicable, (i) a Notice of Borrowing meeting the requirements of Section 2.06(b) with respect to any Borrowing (other than a Continuation or Conversion), (ii) a Notice of Continuation or Conversion meeting the requirements of Section 2.10(b) with respect to a Continuation or Conversion, or (iii) an LC Request meeting the requirements of Section 2.05(b) with respect to each LC Issuance.

(a) No Default; Representations and Warranties. At the time of each Credit Event and also after giving effect thereto, (i) there shall exist no Default or Event of Default and (ii) all representations and warranties of the Credit Parties contained herein or in the other Loan Documents shall be true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct) with the same effect as though such representations and warranties had been made on and as of the date of such Credit Event, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made.

The acceptance of the benefits of (i) the Credit Events on the Closing Date shall constitute a representation and warranty by the Borrower to the Administrative Agent, the Swing Line Lender, each LC Issuer and each of the Lenders that all of the applicable conditions specified in Section 4.01 have been satisfied as of the times referred to in such Section and (ii) each Credit Event thereafter shall constitute a representation and warranty by the Borrower to the Administrative Agent, the Swing Line Lender, each LC Issuer and each of the Lenders that all of the applicable conditions specified in Section 4.02 have been satisfied as of the times referred to in such Section.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent, the Lenders and each LC Issuer to enter into this Agreement and to make the Loans and to issue and to participate in the Letters of Credit provided for herein, each of the Borrower makes the following representations and warranties to, and agreements with, the Administrative Agent, the Lenders and each LC Issuer, all of which shall survive the execution and delivery of this Agreement and each Credit Event:

**Section 5.01 Corporate Status.** The Borrower and each of its Subsidiaries (i) is a duly organized or formed and validly existing corporation, partnership or limited liability company, as the case may be, in good standing or in full force and effect under the laws of the jurisdiction of its formation and has the corporate, partnership or limited liability company power and authority, as applicable, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage, and (ii) has duly qualified and is authorized to do business in all jurisdictions where it is required to be so qualified or authorized except where the failure to be so qualified would not have a Material Adverse Effect.

**Section 5.02 Corporate Power and Authority.** Each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is party. Each Credit Party has duly executed and delivered each Loan Document to which it is party and each Loan Document to which it is party constitutes the legal, valid and binding agreement and obligation of such Credit Party enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

**Section 5.03 No Violation.** Neither the execution, delivery and performance by any Credit Party of the Loan Documents to which it is party nor compliance with the terms and provisions thereof (i) will contravene any provision of any law, statute, rule, regulation, order, writ, injunction or decree of any Governmental Authority applicable to such Credit Party or its properties and assets, (ii) will conflict with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (other than the Liens created pursuant to the Security Documents) upon any of the property or assets of such Credit Party pursuant to the terms of (A) any Closing Date Acquisition Documentation or any Material Contract, or (B) any other promissory note, bond, debenture, indenture, mortgage, deed of trust, credit or loan agreement, or any other agreement or other instrument, to which such Credit Party is a party or by which it or any of its property or assets are bound or to which it may be subject, or (iii) will violate any provision of the Organizational Documents of such Credit Party.

**Section 5.04 Governmental Approvals.** No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required to authorize or is required as a condition to (i) the execution, delivery and performance by any Credit Party of any Loan Document to which it is a party or any of its obligations thereunder, or (ii) the legality, validity, binding effect or enforceability of any Loan Document to which any Credit Party is a party, *except* the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Documents.

Section 5.05 Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened with respect to any Credit Party or any of their respective Subsidiaries or against any of their respective properties (i) that have had, or could reasonably be expected to have, a Material Adverse Effect, or (ii) that question the validity or enforceability of any of the Loan Documents, or of any action to be taken by any Credit Party pursuant to any of the Loan Documents.

Section 5.06 Use of Proceeds; Margin Regulations; Sanctions.

(a) The proceeds of all Loans and LC Issuances shall be utilized to (a) consummate the Closing Date Acquisition, (b) repay the obligations under the Existing Credit Agreement, (c) finance capital expenditures and (d) provide working capital and funds for other general corporate purposes, in each case, not inconsistent with the terms of this Agreement.

(b) No part of the proceeds of any Credit Event will be used directly or indirectly to purchase or carry Margin Stock, or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, in violation of any of the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System. No Credit Party is engaged in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. At no time would more than 25% of the value of the assets of the Borrower or of the Borrower and its consolidated Subsidiaries that are subject to any "arrangement" (as such term is used in Section 221.2(g) of such Regulation U) hereunder be represented by Margin Stock.

(c) No part of the proceeds of any Credit Event will be used directly or indirectly to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or in any other manner that would result in a violation of Sanctions by any Person.

Section 5.07 Financial Statements.

(a) The Borrower has furnished to the Administrative Agent and the Lenders complete and correct copies of the Financial Statements required by Section 4.01(xiii). All financial statements delivered pursuant hereto or in connection herewith have been prepared in accordance with GAAP, consistently applied (except as stated therein), and fairly present the financial position of the Borrower and its Subsidiaries as of the respective dates indicated and the consolidated results of their operations and cash flows for the respective periods indicated, subject in the case of any such financial statements that are unaudited, to normal audit adjustments, none of which shall be material. The Borrower and its Subsidiaries did not have, as of the date of the latest financial statements referred to above, and will not have after giving effect to the incurrence of Loans or LC Issuances hereunder, any material or significant contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto in accordance with GAAP and that in any such case is material in relation to the business, operations, properties, assets, financial or other condition or prospects of the Borrower and its Subsidiaries.

(b) The financial projections of the Borrower and its Subsidiaries for the fiscal years 2020 through 2025 prepared by the Borrower and delivered to the Administrative Agent and the Lenders (the "Financial Projections") were prepared on behalf of the Borrower in good faith after taking into account historical levels of business activity of the Borrower and its Subsidiaries, known trends, including general economic trends, and all other information, assumptions and estimates considered by management of the Borrower and its Subsidiaries to be pertinent thereto; *provided, however,* that no representation or warranty is made as to the impact of future general economic conditions or as to whether the Borrower's projected consolidated results as set forth in the Financial Projections will actually be realized, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results for the periods covered by the Financial Projections may differ materially from the Financial Projections. No facts are known to the Borrower as of the Closing Date which, if reflected in the Financial Projections, would result in a material adverse change in the assets, liabilities, results of operations or cash flows reflected therein.

**Section 5.08 Solvency.** The Borrower has received consideration that is the reasonable equivalent value of the obligations and liabilities that the Borrower has incurred to the Administrative Agent, each LC Issuer and the Lenders under the Loan Documents. The Borrower now has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage and is now solvent and able to pay its debts as they mature, and the Borrower owns property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay the Borrower's debts; and the Borrower is not entering into the Loan Documents with the intent to hinder, delay or defraud its creditors. The Credit Parties, taken as a whole, now have capital sufficient to carry on their business and transactions and all business and transactions in which they are about to engage and are now solvent and able to pay their debts as they mature, and the Credit Parties, taken as a whole, own property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay the Credit Parties' debts; and the Credit Parties are not entering into the Loan Documents with the intent to hinder, delay or defraud their creditors. For purposes of this Section 5.08, "debt" means any liability on a claim, and "claim" means (y) right to payment whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (z) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**Section 5.09 No Material Adverse Change.** Since December 31, 2019, there has been no change in the condition, business, affairs or prospects of the Borrower and its Subsidiaries taken as a whole, or their properties and assets considered as an entirety, *except* for changes none of which, individually or in the aggregate, has had or could reasonably be expected to have, a Material Adverse Effect; provided that in determining whether a Material Adverse Effect has occurred for purposes of this Section 5.09 for the first two years after the Closing Date, current Financial and market conditions engendered by the COVID-19 pandemic shall not be given effect unless such conditions result in a meaningful decline after the Closing Date specific to the Borrower's business and the impacts of COVID-19 on the business, operations or financial condition of the Borrower or any of its Subsidiaries that occurred and were disclosed to the Administrative Agent or Lenders on or before the Closing Date will be disregarded.

**Section 5.10 Tax Returns and Payments.** Each Credit Party has filed all federal and state income tax returns and all other tax returns, domestic and foreign, required to be filed by it and has paid all taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those contested in good faith. Each Credit Party has established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by GAAP. No Credit Party knows of any proposed assessment for additional federal, foreign, state or provincial taxes for any period, or of any basis therefor, which, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as the Borrower and its Subsidiaries have made, could reasonably be expected to have a Material Adverse Effect.

**Section 5.11 Title to Properties, etc.** Each Credit Party has good and marketable title, in the case of Real Property (or valid Leaseholds, in the case of any leased property), and good title, in the case of all other property, to all of its properties and assets free and clear of Liens other than Permitted Liens. The interests of the Credit Parties and their Subsidiaries in the properties reflected in the most recent balance sheet referred to in Section 5.07(a), taken as a whole, were sufficient, in the judgment of the Credit Parties, as of the date of such balance sheet for purposes of the ownership and operation of the businesses conducted by the Credit Parties and their Subsidiaries. Schedule 5.11 sets forth a complete list of Real Property owned and/or leased or subleased (as lessor or sublessor, lessee or sublessee) by the Credit Parties on the Closing Date.

Section 5.12 Lawful Operations, etc. Each Credit Party and each of its Subsidiaries: (i) holds all necessary foreign, federal, state, provincial, local and other governmental licenses, registrations, certifications, permits and authorizations necessary to conduct its business and own its properties; and (ii) is in full compliance with all requirements imposed by law, regulation or rule, whether foreign, federal, state or local, that are applicable to it, its operations, or its properties and assets, including, without limitation, applicable requirements of Environmental Laws, *except* for any failure to obtain and maintain in effect, or noncompliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.13 Environmental Matters.

(a) Each Credit Party and each of their Subsidiaries is in material compliance with all applicable Environmental Laws. All licenses, permits, registrations or approvals required for the conduct of the business of each Credit Party and each of their Subsidiaries under any Environmental Law have been secured and each Credit Party and each of their Subsidiaries is in substantial compliance therewith, except for such licenses, permits, registrations or approvals the failure to secure or to comply therewith is not reasonably likely to have a Material Adverse Effect. No Credit Party nor any of their Subsidiaries has received written notice, or otherwise knows, that it is in any respect in noncompliance with, breach of or default under any applicable writ, order, judgment, injunction, or decree to which such Credit Party or such Subsidiary is a party or that would affect the ability of such Credit Party or such Subsidiary to operate any Real Property and no event has occurred and is continuing that, with the passage of time or the giving of notice or both, would constitute noncompliance, breach of or default thereunder, except in each such case, such noncompliance, breaches or defaults as would not reasonably be expected to, in the aggregate, have a Material Adverse Effect. There are no Environmental Claims pending or, to the best knowledge of any Credit Party, threatened wherein an unfavorable decision, ruling or finding would reasonably be expected to have a Material Adverse Effect. There are no facts, circumstances, conditions or occurrences on any Real Property now or at any time owned, leased or operated by the Credit Parties or their Subsidiaries or on any property adjacent to any such Real Property, that are known by the Credit Parties or as to which any Credit Party or any such Subsidiary has received written notice, that could reasonably be expected: (i) to form the basis of an Environmental Claim against any Credit Party or any of their Subsidiaries or any Real Property of a Credit Party or any of their Subsidiaries; or (ii) to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Property under any Environmental Law, except in each such case, such Environmental Claims or restrictions that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

(b) Hazardous Materials have not at any time been (i) generated, used, treated or stored on, or transported to or from, any Real Property of the Credit Parties or any of their Subsidiaries or (ii) released on or about any such Real Property, in each case where such occurrence or event is not in compliance with or could give rise to liability under Environmental Laws and is reasonably likely to have a Material Adverse Effect.

Section 5.14 Compliance with ERISA.

(a) Compliance by the Credit Parties with the provisions hereof and Credit Events contemplated hereby will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Code. The Credit Parties, their Subsidiaries and each ERISA Affiliate (i) has fulfilled all obligations under the minimum funding standards of ERISA and the Code with respect to each Plan that is not a Multi-Employer Plan or a Multiple Employer Plan, (ii) has satisfied all contribution obligations in respect of each Multi-Employer Plan and each Multiple Employer Plan, (iii) is in compliance in all material respects with all other applicable provisions of ERISA and the Code with respect to each Plan, each Multi-Employer Plan and each Multiple Employer Plan, and (iv) has not incurred any liability under Title IV of ERISA to the PBGC with respect to any Plan, any Multi-Employer Plan, any Multiple Employer Plan, or any trust established thereunder. No Plan or trust created thereunder has been terminated, and there have been no Reportable Events, with respect to any Plan or trust created thereunder or with respect to any Multi-Employer Plan or Multiple Employer Plan, which termination or Reportable Event will or could give rise to a material liability of the Credit Parties or any ERISA Affiliate in respect thereof. No Credit Party nor any Subsidiary of a Credit Party nor any ERISA Affiliate is at the date hereof, or has been at any time within the five years preceding the date hereof, an employer required to contribute to any Multi-Employer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multi-Employer Plan or Multiple Employer Plan. No Credit Party nor any Subsidiary of a Credit Party nor any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as has been disclosed to the Administrative Agent and the Lenders in writing.

(b) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Loans, the Letters of Credit or the Commitments.

Section 5.15 Intellectual Property, etc. Each Credit Party and each of its Subsidiaries has obtained or has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights with respect to the foregoing necessary for the present and planned future conduct of its business, without any known conflict with the rights of others, *except* for such patents, trademarks, service marks, trade names, copyrights, licenses and rights, the loss of which, and such conflicts that, in any such case individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, Schedule 5.15 sets forth a complete list of all material licenses, trade names and service marks and all registered patents, trademarks and copyrights, in each case with respect to Intellectual Property.

Section 5.16 Investment Company Act, etc. No Credit Party nor any of its Subsidiaries is subject to regulation with respect to the creation or incurrence of Indebtedness under the Investment Company Act of 1940, as amended, the Federal Power Act, as amended or any applicable Federal or state public utility law.

Section 5.17 Insurance. The Credit Parties and their Subsidiaries maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with industry standards and in each case in compliance with the terms of Section 6.03. Schedule 5.17 sets forth a complete list of all insurance maintained by the Credit Parties on the Closing Date.

Section 5.18 Burdensome Contracts; Labor Relations. No Credit Party nor any of its Subsidiaries (a) is subject to any corporate restriction, judgment, decree or order, (b) is a party to any labor dispute affecting any bargaining unit or other group of employees generally, (c) is subject to any strike, slowdown, workout or other concerted interruptions of operations by employees of a Credit Party or any Subsidiary, whether or not relating to any labor contracts, (d) is subject to any pending or, to the knowledge of any Credit Party, threatened, unfair labor practice complaint, before the National Labor Relations Board, (e) is subject to any pending or, to the knowledge of any Credit Party, threatened grievance or arbitration proceeding arising out of or under any collective bargaining agreement, (f) is subject to any pending or, to the knowledge of any Credit Party, threatened significant strike, labor dispute, slowdown or stoppage, or (g) is, to the knowledge of the Credit Parties, involved or subject to any union representation organizing or certification matter with respect to the employees of the Credit Parties or any of their Subsidiaries, *except* (with respect to any matter specified in any of the above clauses) for such matters as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries has suffered any strikes, walkouts or work stoppages in the five years preceding the Closing Date.

Section 5.19 Security Interests. Once executed and delivered, each of the Security Documents creates, as security for the Obligations, a valid and enforceable, and upon making the filings and recordings referenced in the next sentence, perfected security interest in and Lien on all of the Collateral subject thereto from time to time, in favor of the Administrative Agent for the benefit of the Secured Creditors, superior to and prior to the rights of all third persons and subject to no other Liens, *except* that the Collateral under the Security Documents may be subject to Permitted Liens. No filings or recordings are required in order to perfect the security interests created under any Security Document except for filings or recordings required in connection with any such Security Document that shall have been made, or for which satisfactory arrangements have been made, upon or prior to the execution and delivery thereof. All recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable legal requirements or other laws applicable to the property encumbered by the Security Documents in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement thereof have been paid.

Section 5.20 True and Complete Disclosure. The factual information (taken as a whole) heretofore or contemporaneously furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender for purposes of or in connection with this Agreement or any transaction contemplated herein, other than the Financial Projections (as to which representations are made only as provided in Section 5.07(b)), is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of such Person in writing to the Administrative Agent or any Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any material fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided, except that all information consisting of financial projections prepared by any Credit Party or any Subsidiary is only represented herein as being based on good faith estimates and assumptions believed by such persons to be reasonable at the time made.

Section 5.21 Defaults. No Default or Event of Default exists as of the Closing Date hereunder, nor will any Default or Event of Default begin to exist immediately after the execution and delivery hereof.

Section 5.22 Capitalization. As of the Closing Date, Schedule 5.22 sets forth a true, complete and accurate description of the equity capital structure of the Borrower and each of its Subsidiaries showing, for each Subsidiary of the Borrower, accurate ownership percentages of the equityholders of record and accompanied by a statement of authorized and issued Equity Interests for each such Person. Except as set forth on Schedule 5.22, as of the Closing Date (a) there are no preemptive rights, outstanding subscriptions, warrants or options to purchase any Equity Interests of the Borrower or any Subsidiary of the Borrower, (b) there are no obligations of the Borrower or any Subsidiary of the Borrower to redeem or repurchase any of its Equity Interests and (c) there is no agreement, arrangement or plan to which the Borrower or any Subsidiary of the Borrower is a party or of which any such Person has knowledge that could directly or indirectly affect the capital structure of any such Person. The Equity Interests of each Subsidiary described on Schedule 5.22 (i) are validly issued and fully paid and non-assessable (to the extent such concepts are applicable to the respective Equity Interests) and (ii) are owned of record and beneficially as set forth on Schedule 5.22, free and clear of all Liens (other than Liens created under the Security Documents). The Organizational Documents of each such Person whose Equity Interests are subject to the Liens created under the Loan Documents do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Liens created under the Loan Documents.

Section 5.23 Closing Date Acquisition Documentation.

(a) Each Credit Party has the power and authority to enter into the Closing Date Acquisition Documentation to which it is a party and has duly authorized, executed and delivered such Closing Date Acquisition Documentation. The Closing Date Acquisition Documentation constitutes the legal, valid and binding obligations of each Credit Party thereto enforceable against such Credit Party in accordance with their respective terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by principles of equity).

(b) As of the Closing Date, (i) each of the representations and warranties made by the Credit Parties in the Closing Date Acquisition Documentation is true and correct in all material respects, except to the extent that such representation and warranty relates to a specific date, in which case such representation shall be true and correct as of such earlier date, except for such failures as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) to the knowledge of the Credit Parties, each of the representations and warranties made by a party, other than a Credit Party, to the Closing Date Acquisition Documentation is true and correct in all material respects, except to the extent that such representation and warranty relates to a specific date, in which case such representation shall be true and correct as of such earlier date, except for such failures as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.24 Anti-Terrorism and Anti-Money Laundering Law Compliance. Each Credit Party and each Subsidiary of each Credit Party is and will remain in compliance with all U.S. trade, economic or financial sanctions laws, embargoes, Executive Orders, restrictive measures and implementing regulations as promulgated by the U.S. Department of State, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act or Executive Order No. 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended, and other applicable law and all regulations issued or promulgated pursuant thereto as well as all applicable anti-corruption laws. Each Credit Party and each Subsidiary of each Credit Party is and will remain in compliance with all other trade, economic or financial sanctions and anti-money laundering or anti-terrorism laws applicable to it. No Credit Party and no Subsidiary or Affiliate of a Credit Party and, to the knowledge of the Borrower, no Affiliate, director, officer, employee or agent of any Credit Party or any of its Subsidiaries is a Person that is, or is owned or controlled by Persons that are (i) the subject of any trade, economic or financial sanctions laws, embargoes or restrictive measures administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council or other relevant sanctions authority (collectively, "Sanctions") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (a) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (b) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (c) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law. The Credit Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal, state or other applicable laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any Person, government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

Section 5.25 Location of Bank Accounts. Schedule 5.25 sets forth a complete and accurate list as of the Closing Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Credit Party, together with a description thereof (*i.e.*, the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

Section 5.26 Material Contracts. As of the Closing Date, all Material Contracts are in full force and effect and no material defaults by a Credit Party currently exist thereunder.

Section 5.27 Affiliate Transactions. Other than as set forth on Schedule 5.27, as of the date of this Agreement, there are no existing or proposed agreements, arrangements or transactions between any Credit Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates (other than the Subsidiaries) of any Credit Party or any members of their respective immediate families, and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Credit Party or any Person with which any Credit Party has a business relationship or which competes with any Credit Party.

Section 5.28 Beneficial Ownership. The information regarding Beneficial Owners provided to the Administrative Agent and the Lenders pursuant to Section 4.01(xix) on or prior to the Closing Date, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered.

Section 5.29 Status of Obligations as Senior Indebtedness. All of the Obligations and fees and expenses in connection therewith shall constitute “senior indebtedness” or similar term relating to the Obligations.

## ARTICLE VI.

### AFFIRMATIVE COVENANTS

The Borrower hereby covenants and agrees that on the Closing Date and thereafter so long as this Agreement is in effect and until such time as the Commitments have been terminated, no Notes remain outstanding and the Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Loan Documents, have been paid in full, as follows:

Section 6.01 Reporting Requirements. The Borrower will furnish to the Administrative Agent and each Lender:

(a) Annual Financial Statements. As soon as available and in any event within 90 days after the close of each fiscal year of the Borrower, the audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by the Borrower, which opinion shall be unqualified (except any "going concern" qualification or exception as a result of the maturity of a Credit Facility within the next 12 months) and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization) together with all management letters of such accountants addressed to the Borrower or any other Credit Party.

(b) Quarterly Financial Statements. As soon as available and in any event within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of the Borrower (commencing with the fiscal quarter ending June 30, 2020), the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated and consolidating statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified on behalf of the Borrower by the Chief Financial Officer of the Borrower, subject to changes resulting from normal year-end audit adjustments.

Documents required to be delivered pursuant to Section 6.01(a) and Section 6.01(b) (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 (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the internet; or (ii) on which such documents are posted on the Borrower's behalf on an internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third party website or whether sponsored by the Administrative Agent); provided that the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

(c) Officer's Compliance Certificates. At the time of the delivery of the financial statements provided for in subparts (a) and (b) above, (i) a certificate (a "Compliance Certificate"), substantially in the form of Exhibit E, signed by a Financial Officer to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions the Credit Parties have taken or proposes to take with respect thereto, which certificate shall set forth the calculations required to establish compliance with the provisions of Section 7.07, and (ii) a Narrative Report with respect to such financial statements and any other operating reports prepared by management for such period.

(d) Budgets and Forecasts. Not later than 45 days after the commencement of any fiscal year of the Borrower and its Subsidiaries, commencing with the fiscal year ending December 31, 2021, a consolidated budget in reasonable detail for each of the four fiscal quarters of such fiscal year, and (if and to the extent prepared by management of the Borrower or any other Credit Party) for any subsequent fiscal years, as customarily prepared by management for its internal use, setting forth, with appropriate discussion, the forecasted balance sheet, income statement, operating cash flows and capital expenditures of the Borrower and its Subsidiaries for the period covered thereby, and the principal assumptions upon which forecasts and budget are based.

(e) Notices. Promptly, and in any event within three Business Days, after any Credit Party or any Subsidiary obtains knowledge thereof, notice of:

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower or the applicable Subsidiary proposes to take with respect thereto;

(ii) the commencement of, or any other material development concerning, any litigation or governmental or regulatory proceeding pending against any Credit Party or any Subsidiary or the occurrence of any other event, if the same could be reasonably likely to have a Material Adverse Effect;

(iii) any significant adverse change in the Borrower's or any Subsidiary's relationship with, or any significant event or circumstance that is in the Borrower's reasonable judgment likely to adversely affect the Borrower's or any Subsidiary's relationship with, (A) any customer (or related group of customers) representing more than 10% of the Borrower's consolidated revenues during its most recent fiscal year, or (B) any supplier that is material to the operations of the Borrower and its Subsidiaries considered as an entirety;

(iv) any amendment or waiver of the terms of, or notice of default under, the Subordinated Debt Documents;

(v) any event that could reasonably be expected to have a Material Adverse Effect;

(vi) promptly after the transmission or receipt thereof, as applicable, copies of all notices received or sent by any Credit Party to or from the holders of any Material Indebtedness or any trustee with respect thereto; or

(vii) promptly, and in any event within ten (10) Business Days after any Material Contract of any Credit Party is terminated or amended in a manner that could reasonably be expected to have a Material Adverse Effect. For the avoidance of doubt, no notice will be required in connection with the expiry of a Material Contract pursuant to its terms.

(f) ERISA. Promptly, and in any event within three (3) days after any Credit Party or any Subsidiary of a Credit Party or any ERISA Affiliate knows of the occurrence of any ERISA Event, the Borrower will deliver to the Administrative Agent and each of the Lenders a certificate of an Authorized Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that such Credit Party or such Subsidiary of such Credit Party or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given by such Credit Party or such Subsidiary of such Credit Party or the ERISA Affiliate to or filed with the PBGC, a Plan participant or the Plan administrator with respect thereto.

(g) **Environmental Matters.** Promptly upon, and in any event within 10 Business Days after, an officer of a Credit Party or any Subsidiary of a Credit Party obtaining knowledge thereof, notice of one or more of the following environmental matters to the extent any of the following could reasonably be expected to have a Material Adverse Effect: (i) any pending or threatened Environmental Claim against such Credit Party or any of its Subsidiaries or any Real Property owned or operated by such Credit Party or any of its Subsidiaries; (ii) any condition or occurrence on or arising from any Real Property owned or operated by such Credit Party or any of its Subsidiaries that (A) results in noncompliance by such Credit Party or any of its Subsidiaries with any applicable Environmental Law or (B) would reasonably be expected to form the basis of an Environmental Claim against such Credit Party or any of its Subsidiaries or any such Real Property; (iii) any condition or occurrence on any Real Property owned, leased or operated by such Credit Party or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability by such Credit Party or any of its Subsidiaries of such Real Property under any Environmental Law; and (iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by such Credit Party or any of its Subsidiaries as required by any Environmental Law or any governmental or other Global agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, the Credit Party's or such Subsidiary's response thereto and the potential exposure in Dollars of the Credit Parties and their Subsidiaries with respect thereto.

(h) **SEC Reports and Registration Statements.** Promptly after transmission thereof or other filing with the SEC, copies of all registration statements (other than the exhibits thereto and any registration statement on Form S-8 or its equivalent) and all annual, quarterly or current reports that any Credit Party or any Subsidiary files with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms). Any such documents that are filed pursuant to and are accessible through the SEC's EDGAR system will be deemed to have been provided in accordance with this clause (h).

(i) **Reserved.**

(j) **Annual, Quarterly and Other Reports.** Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that the Borrower furnishes to its stockholders generally. Any such documents that are filed pursuant to and are accessible through the SEC's EDGAR system will be deemed to have been provided in accordance with this clause (j).

(k) **Auditors' Internal Control Comment Letters, etc.** Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by the Credit Parties and/or any of their Subsidiaries that is submitted to such Credit Party or Subsidiary, as applicable, by its independent accountants in connection with any annual or interim audit made by them of the books of the Borrower or any of its Subsidiaries.

(l) **[Reserved].**

(m) **Information Relating to Collateral.** At the time of the delivery of the annual financial statements provided for in subpart (a) above, a certificate of an Authorized Officer of the Borrower (i) setting forth any changes to the information required pursuant to the Perfection Certificate or confirming that there has been no change in such information since the date of the most recently delivered or updated Perfection Certificate, (ii) outlining all material insurance coverage maintained as of the date of such report by the Credit Parties and all material insurance coverage planned to be maintained by the Credit Parties in the immediately succeeding fiscal year, and (iii) certifying that no Credit Party has taken any actions (and is not aware of any actions so taken) to terminate any UCC financing statements or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests and Liens under the Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

(n) **Proposed Amendments, etc. to Certain Agreements.** No later than five (5) Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed material amendment, supplement, waiver or other modification with respect to any Material Indebtedness Agreement or any other agreement or instrument subject to the restrictions contained in Section 7.10 or Section 7.11.

(o) **Violation of Anti-Terrorism Laws.** Promptly (i) if any Credit Party obtains knowledge that any Credit Party or any Person that owns, directly or indirectly, any Equity Interests of any Credit Party, or any other holder at any time of any direct or indirect equitable, legal or beneficial interest therein is the subject of any of the Anti-Terrorism Laws, such Credit Party will notify the Administrative Agent and (ii) upon the request of the Administrative Agent or any Lender (through the Administrative Agent), such Credit Party will provide any information the Administrative Agent or such Lender believes is reasonably necessary to be delivered to comply with the USA Patriot Act or to demonstrate compliance with any reporting requirement under any other applicable anti-terrorism or anti-money laundering act or regulation.

(p) **Other Information.** Promptly upon the reasonable request therefor (and in any event within 10 days of such request), such other information or documents (financial or otherwise) relating to any Credit Party or any Subsidiary as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request from time to time.

**Section 6.02 Books, Records and Inspections.** Each Credit Party will, and will cause each of its Subsidiaries to, (i) keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of such Credit Party or such Subsidiary, as the case may be, in accordance with GAAP; and (ii) permit officers and designated representatives of the Administrative Agent or any of the Lenders to visit and inspect any of the properties or assets of such Credit Party and/or its Subsidiaries in whomsoever's possession (but only to the extent such Credit Party or such Subsidiary, as applicable, has the right to do so to the extent in the possession of another Person), to examine the books of account of such Credit Party or such Subsidiary, as applicable, and make copies thereof and take extracts therefrom, and to discuss the affairs, finances and accounts of such Credit Party and/or such Subsidiary, as applicable, with, and be advised as to the same by, its and their officers and independent accountants and independent actuaries, if any, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any of the Lenders (through the Administrative Agent) may request.

**Section 6.03 Insurance.**

(a) Each Credit Party will, and will cause each of its Subsidiaries to, (i) maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with the insurance coverage maintained by the Credit Parties and their Subsidiaries as of the Closing Date, and (ii) forthwith upon the Administrative Agent's or any Lender's written request, furnish to the Administrative Agent or such Lender such information about such insurance as the Administrative Agent or such Lender may from time to time reasonably request, which information shall be prepared in form and detail reasonably satisfactory to the Administrative Agent or such Lender and certified by an Authorized Officer of the Borrower.

(b) Each Credit Party will at all times keep its respective property that is subject to the Lien of any Security Document insured in favor of the Administrative Agent, for the benefit of the Secured Creditors and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Credit Parties) (i) shall be endorsed to the Administrative Agent's satisfaction for the benefit of the Administrative Agent (including, without limitation, by naming the Administrative Agent as loss payee (with respect to Collateral) or, to the extent permitted by applicable law, as an additional insured), (ii) shall state that such insurance policies shall not be canceled without 30 days' prior written notice thereof (or 10 days' prior written notice in the case of cancellation for the non-payment of premiums) by the respective insurer to the Administrative Agent, (iii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the Lenders, and (iv) shall in the case of any such certificates or endorsements in favor of the Administrative Agent, be delivered to or deposited with the Administrative Agent.

(c) Each Credit Party shall maintain at all times, with respect to any Mortgaged Real Property that is a Flood Hazard Property, the flood insurance required by Section 6.10(c)(iv), and shall deliver to the Administrative Agent evidence of such insurance in form and substance reasonably satisfactory to the Administrative Agent, including, without limitation, annual renewals of such insurance.

(d) If any Credit Party shall fail to maintain any insurance in accordance with this Section 6.03, or if any Credit Party shall fail to so endorse and deliver or deposit all endorsements or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Borrower agrees to reimburse the Administrative Agent on demand for all costs and expenses of procuring such insurance.

**Section 6.04 Payment of Taxes and Claims.** Each Credit Party will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims that, if unpaid, might become a Lien or charge upon any properties of any Credit Party or any of their respective Subsidiaries; *provided, however,* that no Credit Party nor any of their respective Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if (i) it has maintained adequate reserves with respect thereto in accordance with GAAP and (ii) in the case of a tax or claim that has or may become a Lien against any of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such tax or claim. Without limiting the generality of the foregoing, each Credit Party will, and will cause each of its Subsidiaries to, pay in full all of its wage obligations in accordance with the Fair Labor Standards Act (29 U.S.C. Sections 206-207), with respect to its employees subject thereto, and any comparable provisions of applicable law.

**Section 6.05 Corporate Franchises.** Each Credit Party will do, and will cause each of its Subsidiaries to do, or cause to be done, all things necessary to preserve and keep in full force and effect its corporate existence, rights and authority, or qualification, franchises, licenses and permits the loss of which could reasonably be expected to have a Material Adverse Effect; *provided, however,* that nothing in this Section 6.05 shall be deemed to prohibit any transaction permitted by Section 7.02.

**Section 6.06 Good Repair.** Each Credit Party will, and will cause each of its Subsidiaries to, ensure that its material properties and equipment used or useful in its business in whomsoever's possession they may be, are kept in reasonably good repair, working order and condition, normal wear and tear excepted, and that from time to time there are made in such properties and equipment all needful and proper repairs, renewals, replacements, extensions, additions, betterments and improvements thereto, in each case, to the extent and in the manner customary for companies in similar businesses to the extent commercially practicable to do so.

Section 6.07 Compliance with Statutes, etc. Each Credit Party will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property, other than those the noncompliance with which would not individually or in the aggregate be reasonably expected to have a Material Adverse Effect.

Section 6.08 Compliance with Environmental Laws. Without limitation of the covenants contained in Section 6.07:

(a) Each Credit Party will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws applicable to the ownership, lease or use of all Real Property now or hereafter owned, leased or operated by such Credit Party or any of its Subsidiaries, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, *except* to the extent that such compliance with Environmental Laws is being contested in good faith and by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP, and the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.

(b) Each Credit Party will keep or cause to be kept, and will cause each of its Subsidiaries to keep or cause to be kept, all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws other than Permitted Liens.

(c) No Credit Party nor any of its Subsidiaries will generate, use, treat, store, release or dispose of, or permit the generation, use, treatment, storage, release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Credit Parties or any of their Subsidiaries or transport or permit the transportation of Hazardous Materials to or from any such Real Property other than in compliance with applicable Environmental Laws and in the ordinary course of business, *except* to the extent that any noncompliance with Environmental Laws is being contested in good faith and by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP, and the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.

(d) If required to do so under any applicable order of any Governmental Authority, each Credit Party will undertake, and cause each of its Subsidiaries to undertake any clean up, removal, remedial or other action necessary to remove and clean up any Hazardous Materials from any Real Property owned, leased or operated by the Credit Parties or any of its Subsidiaries in accordance with, in all material respects, the requirements of all applicable Environmental Laws and in accordance with, in all material respects, such orders of all Governmental Authorities, *except* to the extent that such Credit Party or such Subsidiary contesting such order in good faith and by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP, and the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.

Section 6.09 Certain Subsidiaries to Join in Guaranty. In the event that at any time after the Closing Date, any Credit Party acquires, creates (including by virtue of any statutory division of any such Credit Party) or has any Domestic Subsidiary or Resulting Company (other than an Excluded Subsidiary or Immaterial Subsidiary) that is not already a party to the Security Agreement, such Credit Party will promptly, but in any event within 20 days (or such later date as the Administrative Agent agrees to in its reasonable discretion), cause such Subsidiary or Resulting Company to deliver to the Administrative Agent, (a) an executed Guaranty or a joinder thereto, duly executed by such Subsidiary or Resulting Company, pursuant to which such Subsidiary or Resulting Company joins in the Guaranty as a guarantor thereunder, (b) resolutions of the Board of Directors or equivalent governing body of such Subsidiary or Resulting Company, certified by the Secretary or an Assistant Secretary of such Subsidiary or Resulting Company, as duly adopted and in full force and effect, authorizing the execution and delivery of such joinder supplement and the other Loan Documents to which such Subsidiary or Resulting Company is or will be a party, together with such other corporate documentation and an opinion of counsel as the Administrative Agent shall reasonably request, in each case, in form and substance reasonably satisfactory to the Administrative Agent and (c) all such documents, instruments, agreements, and certificates as are similar to those described in Section 6.10. In the event that any Person becomes a CFC of the Borrower and the ownership interests of such CFC are owned by the Borrower or by any Guarantor, the Borrower shall, or shall cause such Guarantor to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Section 6.10, and the Borrower shall take, or shall cause such Guarantor to take, all of the actions required under Section 6.10.

Section 6.10 Additional Security; Real Property Matters; Further Assurances.

(a) Additional Security. Subject to subpart (b) below, if any Credit Party acquires, owns or holds an interest (other than a Leasehold Interest) in any Real Property with a fair market value in excess of \$5,000,000 for any Real Property (with fair market value determined at the time of acquisition and agreed to by the Administrative Agent), or any personal property that is not at the time included in the Collateral, the Borrower will promptly notify the Administrative Agent in writing of such event, identifying the property or interests in question and referring specifically to the rights of the Administrative Agent and the Lenders under this Section, and the Credit Party will, or will cause such Subsidiary to, within 10 Business Days following request by the Administrative Agent, grant to the Administrative Agent for the benefit of the Secured Creditors a Lien on such Real Property or such personal property pursuant to the terms of such security agreements, assignments, Mortgages or other documents as the Administrative Agent deems appropriate (collectively, the “Additional Security Documents”) or a joinder in any existing Security Document. Furthermore, the Borrower or such other Credit Party shall cause to be delivered to the Administrative Agent such opinions of local counsel, corporate resolutions, a Perfection Certificate, consents of landlords, Landlord’s Agreements and other related documents as may be reasonably requested by the Administrative Agent in connection with the execution, delivery and recording of any such Additional Security Document or joinder, all of which documents shall be in form and substance satisfactory to the Administrative Agent.

(b) Foreign Subsidiaries. Notwithstanding anything in subpart (a) above or elsewhere in this Agreement to the contrary, no Credit Party shall be required to (i) pledge (or cause to be pledged) more than 65% of the Equity Interests designated as voting and 100% of the Equity Interests designated as non-voting in any CFC or CFC Holdco, or (ii) cause a CFC to become a Guarantor or otherwise become a party to the Security Agreement or any other Security Document, if to do so would subject the Borrower or any of its Subsidiaries to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount the Borrower considers material.

(c) Real Property Matters. The Credit Parties shall have delivered to the Administrative Agent with respect to each parcel of Real Property to the extent that such parcel of Real Property becomes or should be subject to a Mortgage pursuant to Section 6.10(a) above, all of the following:

(i) an American Land Title Association (ALTA) mortgagee title insurance policy or policies, or unconditional commitments therefor (a “Title Policy”) issued by a title insurance company reasonably satisfactory to the Administrative Agent (a “Title Company”), in an amount not less than the amount reasonably required therefor by the Administrative Agent (taking into account the estimated value of the property involved), insuring fee simple title to, or a valid leasehold interest in, such Real Property vested in the applicable Credit Party and assuring the Administrative Agent that the applicable Mortgage creates a valid and enforceable first priority mortgage lien on the respective Real Property encumbered thereby, subject only to Permitted Liens, which Title Policy (1) shall include an endorsement for mechanics’ liens, for revolving, “variable rate” and future advances under this Agreement and for any other matters reasonably requested by the Administrative Agent, and (2) shall provide for affirmative insurance and such reinsurance as the Administrative Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to the Administrative Agent;

(ii) a title report issued by the Title Company with respect thereto, dated not more than 30 days prior to the date of execution of the applicable Mortgage and satisfactory in form and substance to the Administrative Agent;

(iii) copies of all recorded documents listed as exceptions to title or otherwise referred to in the Title Policy or in such title report relating to such Real Property;

(iv) evidence, which may be in the form of a letter or other certification from the Title Company or from an insurance broker, surveyor, engineer or other provider, as to whether (1) such Real Property is a Flood Hazard Property, and (2) the community in which such Flood Hazard Property is located is participating in the National Flood Insurance Program, and if such Closing Date Mortgaged Property is a Flood Hazard Property, evidence that the applicable Credit Party has obtained flood insurance in respect of such Flood Hazard Property to the extent required under the applicable regulations of the Board of Governors of the Federal Reserve System;

(v) a survey, in form and substance reasonably satisfactory to the Administrative Agent, of such Real Property, certified in a manner satisfactory to the Administrative Agent by a licensed professional surveyor reasonably satisfactory to the Administrative Agent;

(vi) a certificate of the Borrower identifying any Phase I, Phase II or other environmental report received in draft or final form by any Credit Party during the five year period prior to the date of execution of the Mortgage relating to such Real Property and/or the operations conducted therefrom, or stating that no such draft or final form reports have been requested or received by any Credit Party (or its counsel), together with true and correct copies of all such environmental reports so listed (in draft form, if not finalized); and all such environmental reports shall be satisfactory in form and substance to the Administrative Agent;

(vii) an opinion of local counsel admitted to practice in the jurisdiction in which such Real Property is located, satisfactory in form and substance to the Administrative Agent, as to the validity and effectiveness of such Mortgage as a lien on such Real Property encumbered thereby, and covering such other matters of law in connection with the execution, delivery, recording and enforcement of such Mortgage as the Administrative Agent may reasonably request; and

(viii) upon request of the Administrative Agent and/or the Lenders, the Administrative Agent shall have received appraisals, satisfactory in form and substance to the Administrative Agent and each Lender, dated not more than 60 days prior to the date of execution of each Mortgage and addressed to the Administrative Agent and the Lenders or accompanied by a separate letter indicating that the Administrative Agent and the Lenders may rely thereon, from one or more nationally recognized appraisal firms, satisfactory to the Administrative Agent, covering (i) the Real Properties, and (ii) all other tangible property, plant and equipment owned by the Borrower or any of its Subsidiaries, that is to be subjected to the Lien of the Security Agreement and is located at any plant or facility owned or leased by the Borrower or any of its Subsidiaries in the United States of America, which appraisals shall set forth (A) the "fair market value" of such property (*i.e.*, the amount at which such property would equitably exchange between a willing buyer and a willing seller, neither being under a compulsion and both having reasonable knowledge of all relevant facts on the premise that such property will continue in its present use as part of an ongoing business enterprise), (B) the "orderly disposal value" of such property (*i.e.*, the amount that may be realized through a forced sale disposal of such property when a reasonable time to find a buyer is allowed), and (C) the "forced liquidation value" of such property (*i.e.*, the amount that may be realized through an immediate forced sale disposal of such property), in each case as determined in accordance with sound appraisal standards.

Notwithstanding anything herein to the contrary, no Mortgage shall be signed with respect to any Real Property unless and until each Lender has approved a life of loan flood zone determination and, if such property is in a federal flood hazard area, a Borrower notice and a policy of Flood Insurance all in compliance with applicable Flood Insurance Laws.

(d) Taxes. The Credit Parties shall have paid or caused to be paid all costs and expenses payable in connection with all of the actions set forth in Section 6.10(c), including but not limited to (A) all mortgage, intangibles or similar taxes or fees, however characterized, payable in respect of this Agreement, the execution and delivery of the Notes, any of the Mortgages or any of the other Loan Documents or the recording of any of the same or any other documents related thereto; and (B) all expenses and premiums of the Title Company in connection with the issuance of such policy or policies of title insurance and to all costs and expenses required for the recording of the Mortgages or any other Loan Documents or any other related documents in the appropriate public records.

(e) Landlord/Mortgagee/Bailee Waivers. The Credit Parties will use commercially reasonable efforts upon request of the Administrative Agent to obtain, and will maintain in effect, Landlord's Agreements on any Real Property (i) on which any items of Collateral are located, *provided* that the Credit Parties shall not be required to deliver Landlord Agreements for those locations at which the value of the Collateral located thereon is no more than \$3,000,000 in the aggregate for all locations for which Landlord's Agreements have not been obtained, (ii) that functions as the chief executive office for any Credit Party or (iii) at which books and records of any Credit Party are located, in each case in form and substance acceptable to the Administrative Agent.

(f) Further Assurances. (i) The Credit Parties will, and will cause each of their respective Subsidiaries to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Administrative Agent from time to time such conveyances, financing statements, transfer endorsements, powers of attorney, certificates, and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Administrative Agent may reasonably require, including any documents, instruments and filings required by the Assignment of Claims Act of 1940. If at any time the Administrative Agent determines, based on applicable law, that all applicable taxes (including, without limitation, mortgage recording taxes or similar charges) were not paid in connection with the recordation of any mortgage or deed of trust, the Borrower shall promptly pay the same upon demand.

(ii) The Borrower will provide to the Administrative Agent and the Lenders (A) confirmation of the accuracy of the information regarding Beneficial Owners provided to the Administrative Agent and the Lenders, (B) updates with respect to the information regarding Beneficial Owners, including, without limitation, updates to any complete legal name, address of residence, date of birth, social security number and/or tax identification number, in form and substance acceptable to the Administrative Agent and the Lenders, when such information has changed or when the individual(s) to be identified as a Beneficial Owner have changed and (C) such other information and documentation as may reasonably be requested by the Administrative Agent or any Lender from time to time for purposes of compliance by the Administrative Agent or such Lender with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by the Administrative Agent or such Lender to comply therewith.

Section 6.11 Control Agreements. Subject to Section 6.16, the Credit Parties will take commercially reasonable efforts to enter into, and will maintain in effect, Control Agreements with respect to each deposit account (excluding deposit accounts with no more than a \$100,000 individually or \$500,000 in the aggregate for all such accounts balance in the aggregate at any given time and any payroll account or zero balance account) and lock-box account maintained by the Credit Parties after the Closing Date. Each such Control Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent.

Section 6.12 Material Contracts. Each Credit Party will perform and observe in all material respects all the terms and provisions of each Material Contract to be performed or observed by it, and no Credit Party will take any action that would cause any such Material Contract to not be in full force and effect, and cause each of its Subsidiaries to do so except, in each case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.13 Senior Debt. The Obligations shall, and the Credit Parties shall take all necessary action to ensure that the Obligations shall, at all times rank (a) at least *pari passu* in right of payment (to the fullest extent permitted by law) with all other senior Secured Indebtedness of the Credit Parties and (b) prior in right of payment, to the extent set forth in the applicable subordination agreement, to the Subordinated Indebtedness.

Section 6.14 Use of Proceeds. The Borrower will use the proceeds of the Term Loans on the Closing Date to consummate the Transactions including the payments of fees and expenses in connection with the Transactions and for working capital needs and for other general corporate purposes and for any other purpose not prohibited under the Loan Documents. The Borrower will use the proceeds of the Revolving Facility and LC Issuances (i) to consummate the Transactions, (ii) to provide working capital to the Borrower and its Subsidiaries (including to replace or provide credit support for any existing letters of credit), (iii) to provide funds for other general corporate purposes of the Borrower and its Subsidiaries (including Permitted Acquisitions and Investments), (iv) to fund certain fees and expenses relating thereto, and (v) to finance any transaction not prohibited hereby.

Section 6.15 Lender Meetings. The Credit Parties will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and the Lenders once during each fiscal year to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent.

Section 6.16 Post-Closing Obligations. The Borrower will cause to be delivered or performed the documents and other agreements and actions listed on Schedule 6.16 within the time frame specified on therein.

## ARTICLE VII.

### NEGATIVE COVENANTS

Each of the Borrower and the Subsidiaries hereby covenants and agrees that on the Closing Date and thereafter for so long as this Agreement is in effect and until such time as the Commitments have been terminated, no Notes remain outstanding and the Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Loan Documents, have been paid in full as follows:

Section 7.01 Changes in Business. No Credit Party nor any of its Subsidiaries will engage in any business other than the businesses engaged in by the Credit Parties and its Subsidiaries on the Closing Date and any other business ancillary, incidental, complimentary or otherwise reasonably related thereto.

Section 7.02 Consolidation, Merger, Acquisitions, Asset Sales, Statutory Divisions, etc. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, (i) wind up, liquidate or dissolve its affairs, (ii) enter into any transaction of merger or consolidation, (iii) make or otherwise effect any Acquisition, (iv) sell or otherwise dispose of any of its property or assets outside the ordinary course of business, or otherwise make or otherwise effect any Asset Sale, (v) consummate a statutory division or (vi) agree to do any of the foregoing at any future time, *except* that, if no Default or Event of Default shall have occurred and be continuing or would result therefrom, each of the following shall be permitted:

(a) the merger, consolidation or amalgamation of (i) any Subsidiary of the Borrower with or into the Borrower, *provided* the Borrower is the surviving or continuing or resulting corporation; (ii) any Subsidiary of the Borrower with or into any Guarantor, *provided* that the surviving or continuing or resulting corporation is a Guarantor; (iii) any Foreign Subsidiary of the Borrower with or into any other Foreign Subsidiary of the Borrower; or (iv) any Domestic Subsidiary that is not a Credit Party into any other Domestic Subsidiary that is not a Credit Party;

(b) any Asset Sale by (i) the Borrower to any other Credit Party, (ii) any Subsidiary of the Borrower to any Credit Party; (iii) any Foreign Subsidiary of the Borrower to any other Foreign Subsidiary of the Borrower; or (iv) any Domestic Subsidiary that is not a Credit Party to any other Domestic Subsidiary that is not a Credit Party;

(c) any transaction permitted pursuant to Section 7.05;

(d) Asset Sales or other dispositions not to exceed \$5,000,000 in any Fiscal Year, so long as (i) at the time of such Asset Sale or disposition, no Default or Event of Default exists and (ii) the consideration for each such Asset Sale or disposition represents fair value;

(e) the Borrower or any of its Subsidiaries may consummate any Asset Sale or other disposition, *provided* that (i) the consideration for each such Asset Sale represents fair value and at least 75% of such consideration consists of cash or Cash Equivalents; (ii) in the case of any Asset Sale involving consideration in excess of \$2,000,000, at least five Business Days prior to the date of completion of such Asset Sale, the Borrower shall have delivered to the Administrative Agent an officer's certificate executed by an Authorized Officer, which certificate shall contain (A) a description of the proposed transaction, the date such transaction is scheduled to be consummated, the estimated sale price or other consideration for such transaction, and (B) a certification that no Default or Event of Default has occurred and is continuing, or would result from consummation of such transaction; and (iii) at the time of and immediately after giving effect to such Asset Sale or disposition, no Default or Event of Default has occurred and is continuing, or would result from consummation of such transaction;

(f) the Borrower or any Subsidiary may make any Acquisition that is a Permitted Acquisition, *provided* that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied; and

(g) those transactions listed on Schedule 7.02 as of the Closing Date.

Section 7.03 Liens. No Credit Party will, nor will any Credit Party permit its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets of any kind of such Credit Party or such Subsidiary whether now owned or hereafter acquired, *except* that the foregoing shall not apply to:

(a) any Standard Permitted Lien;

(b) Liens in existence on the Closing Date that are listed on Schedule 7.03 hereto and any renewals or extensions, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.04(b), and (iii) the direct or any contingent obligor with respect thereto is not changed;

(c) Liens (i) that are placed upon fixed or capital assets acquired, constructed or improved by the Credit Parties or any of their respective Subsidiaries, *provided* that (A) such Liens only secure Indebtedness permitted by Section 7.04(c), (B) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (C) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (D) such Liens shall not apply to any other property or assets of the Credit Parties or any of their respective Subsidiaries; or (ii) arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any such Liens, *provided* that the principal amount of such Indebtedness is not increased and such Indebtedness is not secured by any additional assets;

(d) any Lien granted to the Administrative Agent securing any of the Obligations or any other Indebtedness of the Credit Parties under the Loan Documents or any Indebtedness under any Designated Hedge Agreement;

(e) Liens securing Purchase Money Indebtedness permitted by Section 7.04; and

(f) other Liens on assets of the Borrower and its Subsidiaries not to exceed \$3,000,000 at any one time.

Section 7.04 Indebtedness. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness of the Credit Parties or any of their respective Subsidiaries, *except*:

(a) Indebtedness incurred under this Agreement and the other Loan Documents;

(b) the Indebtedness set forth on Schedule 7.04 hereto, and any refinancing, extension, renewal or refunding of any such Indebtedness not involving an increase in the principal amount thereof;

(c) (i) Indebtedness consisting of Capitalized Lease Obligations of the Credit Parties and their Subsidiaries, (ii) Indebtedness secured by a Lien referred to in Section 7.03(c), (iii) Purchase Money Indebtedness, and (iv) any refinancing, extension, renewal or refunding of any such Indebtedness not involving an increase in the principal amount thereof, *provided* the aggregate outstanding principal amount (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Lease) of Indebtedness permitted by this subpart (c) shall not exceed \$3,000,000 at any time;

(d) any intercompany loans (i) made by the Borrower or any Subsidiary of the Borrower to any Credit Party, (ii) made by any Non-Credit Party to any other Non-Credit Party, and (iii) any other intercompany loans permitted by Section 7.05(i); provided, that any intercompany loan between a Credit Party and a Non-Credit Party shall be subject to the Intercompany Subordination Agreement;

(e) Indebtedness of the Borrower and its Subsidiaries under Hedge Agreements, *provided* such Hedge Agreements have been entered into in the ordinary course of business and not for speculative purposes;

(f) Indebtedness constituting Guaranty Obligations permitted by Section 7.05;

(g) Indebtedness incurred in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums in the ordinary course of business;

(h) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts to the extent incurred in the ordinary course of business;

(i) obligations in respect of surety, stay, customs and appeal bonds, bid or performance bonds and performance and completion guarantees and obligations of a like nature (including letters of credit-related thereto), worker's compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance obligations, trade contracts, governmental contracts and leases, in each case incurred in the ordinary course of business and not in connection with the borrowing of money;

(j) to the extent constituting Indebtedness, deposits and advance payments received from customers in the ordinary course of business consistent with past practices;

(k) unsecured Indebtedness of Non-Credit Parties not to exceed \$3,000,000 any time outstanding;

(l) additional Indebtedness of the Borrower or any of its Subsidiaries to the extent not permitted by any of the foregoing clauses, *provided* that the aggregate outstanding principal amount of all such Indebtedness does not exceed \$3,000,000 at any time; provided further, that to the extent such Indebtedness is secured by Liens on the Collateral, such Lien cannot be senior or pari passu with the Liens securing the Obligations and such Indebtedness is subject to an intercreditor agreement reasonably acceptable to the Administrative Agent; and

(m) Indebtedness constituting Permitted Earnouts.

Section 7.05 Investments and Guaranty Obligations. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, directly or indirectly, (i) make or commit to make any Investment or (ii) be or become obligated under any Guaranty Obligations, *except*:

(a) Investments by the Borrower or any of its Subsidiaries in cash and Cash Equivalents;

(b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;

(c) the Borrower and its Subsidiaries may acquire and hold receivables and similar items owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) any Permitted Creditor Investment;

(e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business, *provided* the aggregate outstanding amount of all such loans and advances shall not exceed \$1,000,000 at any time;

(f) Investments existing as of the Closing Date and described on Schedule 7.05 hereto;

(g) any Guaranty Obligations of the Credit Parties or any of their respective Subsidiaries in favor of the Administrative Agent, each LC Issuer and the Lenders and any other benefited creditors under any Designated Hedge Agreements pursuant to the Loan Documents;

(h) Investments of the Borrower and its Subsidiaries in Hedge Agreements permitted to be entered into pursuant to this Agreement;

(i) Investments of the Borrower or any Subsidiary in any other Subsidiaries; provide that, loans and investments by a Credit Party to or in a Non-Credit Party made on or after the Closing Date (A) shall not exceed at any time, in the aggregate amount will all such loans and investments by all Credit Parties, the sum of (1) \$10,000,000, plus (2) to the extent the Consolidated Leverage Ratio on a pro forma basis is less than 2.50 to 1.00 as of the most recently ended Testing Period for which financial statements have been provided pursuant to Section 6.01(a) or (b) hereof, \$10,000,000, and (B) such loans and investments are subject to the Intercompany Subordination Agreement;

(j) the Acquisitions permitted by Section 7.02(f);

(k) any Guaranty Obligation incurred by any Credit Party with respect to Indebtedness of another Credit Party that is permitted by Section 7.04;

(l) other Investments by the Borrower or any Subsidiary of the Borrower in any other Person made after the Closing Date and not permitted pursuant to the foregoing subparts, *provided* that (i) at the time of making any such Investment no Default or Event of Default shall have occurred and be continuing, or would result therefrom, and (ii) the maximum cumulative amount of all such Investments that are so made pursuant to this subpart and outstanding at any time shall not exceed an aggregate of \$3,000,000, taking into account the repayment of any loans or advances comprising such Investments;

(m) Investments constituting deposits made in connection with the purchase of goods or services in the ordinary course of business; and

(n) any Specified Investments.

Section 7.06 Restricted Payments. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, *except*:

(a) the Borrower or any of its Subsidiaries may declare and pay or make Capital Distributions that are payable solely in additional shares of its common stock (or warrants, options or other rights to acquire additional shares of its common stock);

(b) (i) any Subsidiary of the Borrower may declare and pay or make Capital Distributions to the Borrower or any Guarantor, and (ii) any Non-Credit Party may declare and pay or make Capital Distributions to any other Non-Credit Party, the Borrower or any Guarantor; and

(c) the Borrower or any Subsidiary may declare and pay or make Cash Dividends or make payments of Permitted Earnout so long as after giving pro forma effect thereto, (i) no Default or Event of Default exists or will exist, (ii) as of the last Testing Period for which financial statements were delivered pursuant to Section 6.01(a) or (b) hereto, the Borrower is in pro forma compliance with the financial covenants contained in Section 7.07 hereto, (iii) the availability under the Revolving Credit Facility plus the unrestricted cash and Cash Equivalents and 75% of the Specified Investments of the Borrower and the other Credit Parties is greater than \$10,000,000, and (iv) the aggregate amount under this clause (c) shall not exceed \$10,000,000 per fiscal year; provided however, if, after giving pro forma effect to any such payment, the Consolidated Leverage Ratio as of the last Testing Period for which financial statements were delivered pursuant to Section 6.01(a) or (b) hereto shall be less than 2.50 to 1.00, this clause (iv) shall not apply.

(d) to the extent no Default or Event of Default then exists or will result therefrom, the Borrower or any Subsidiary may make Restricted Payments of up to \$5,000,000 per fiscal year, *provided*, however, that if the aggregate amount of Restricted Payments made in any fiscal year shall be less than the amount of repurchases permitted under this Section 7.6(d) for such fiscal year (before giving effect to any carryover), then the amount of such shortfall of such maximum amount may, so long as no Default or Event of Default has occurred and is then continuing, be added to the amount of repurchases permitted under this Section 7.06(d) for the immediately succeeding (but not any other) fiscal year, and (ii) in determining whether any amount is available for carryover, the amount expended in any fiscal year shall first be deemed to be from the amount allocated to such fiscal year (before giving effect to any carryover).

#### Section 7.07 Financial Covenants.

(a) Consolidated Leverage Ratio. The Credit Parties will not permit the Consolidated Leverage Ratio of the Credit Parties and their Subsidiaries to be greater than 3.00 to 1.00; provided that, upon written notice of the Borrower to the Administrative Agent and the Lenders of a Material Acquisition, for the twelve month period starting as of the date of such Material Acquisition, the Consolidated Leverage Ratio shall not exceed 3.50:1.00 as of the last day of any fiscal quarter ending during such twelve month period.

(b) Fixed Charge Coverage Ratio. The Credit Parties will not permit at any time the Fixed Charge Coverage Ratio of the Credit Parties and their Subsidiaries to be less than 1.25 to 1.00.

Section 7.08 Limitation on Certain Restrictive Agreements. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist or become effective, any “negative pledge” covenant or other agreement, restriction or arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Credit Party or any of their respective Subsidiaries to create, incur or suffer to exist any Lien upon any of its property or assets as security for Indebtedness, or (b) the ability of any such Credit Party or any such Subsidiary to make Capital Distributions or any other interest or participation in its profits owned by any Credit Party or any Subsidiary, or pay any Indebtedness owed to any Credit Party or any Subsidiary, or to make loans or advances to any Credit Party or any Subsidiary, or transfer any of its property or assets to any Credit Party or any Subsidiary, *except* for such restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (iv) customary provisions restricting assignment of any licensing agreement entered into in the ordinary course of business, (v) customary provisions restricting the transfer or further encumbering of assets subject to Liens permitted under Section 7.03(c), (vi) customary restrictions affecting only a Subsidiary of the Borrower under any agreement or instrument governing any of the Indebtedness of a Credit Party permitted pursuant to Section 7.04, (vii) restrictions affecting any Non-Credit Party under any agreement or instrument governing any Indebtedness of such Non-Credit Party permitted pursuant to Section 7.04, and customary restrictions contained in “comfort” letters and guarantees of any such Indebtedness, (viii) any document relating to Indebtedness secured by a Lien permitted by Section 7.03, insofar as the provisions thereof limit grants of junior liens on the assets securing such Indebtedness, (ix) any Operating Lease or Capital Lease, insofar as the provisions thereof limit grants of a security interest in, or other assignments of, the related leasehold interest to any other Person, and (x) any restrictions existing at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower.

Section 7.09     **Transactions with Affiliates.** No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, enter into any transaction or series of transactions with any Affiliate (other than, in the case of the Borrower, any Subsidiary, and in the case of a Subsidiary, the Borrower or another Subsidiary) other than in the ordinary course of business of and pursuant to the reasonable requirements of such Credit Party's or such Subsidiary's business and upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person other than an Affiliate, *except* (i) sales of goods to an Affiliate for use or distribution outside the United States that in the good faith judgment of the Credit Parties comply with any applicable legal requirements of the Code, or (ii) agreements and transactions with and payments to officers, directors and shareholders that are either (A) entered into in the ordinary course of business and not prohibited by any of the other provisions of this Agreement, or (B) entered into outside the ordinary course of business, approved by the directors or shareholders of the Borrower, and not prohibited by any of the other provisions of this Agreement or in violation of any law, rule or regulation.

Section 7.10     **Modification of Certain Agreements.** Without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld or delayed), no Credit Party will amend, modify, supplement, waive or otherwise change, or consent or agree to any amendment, modification, supplement, waiver or other change to, or enter into any forbearance from exercising any rights with respect to the terms or provisions contained in:

(a) any Subordinated Debt Document (other than any amendment, modification, supplement, waiver or other change for which no fee is payable to the holders of the Subordinated Indebtedness and that (i) extends the maturity or reduces the amount of any repayment, prepayment or redemption of the principal of such Subordinated Indebtedness, (ii) reduces the rate or extends any date for payment of interest, premium (if any) or fees payable on such Subordinated Indebtedness or (iii) makes the covenants, events of default or remedies in such Subordinated Debt Documents less restrictive on any applicable Credit Party);

(b) any of the terms of any preferred Equity Interests of the Credit Parties (other than any such amendment, modification, supplement, waiver or other change for which no fee is payable to the holders of such preferred stock and that (i) extends the scheduled redemption date or reduces the amount of any scheduled redemption payment or (ii) reduces the rate or extend any date for payment of dividends thereon); or

(c) any Credit Party's Organizational Documents in any manner adverse to the interests of Administrative Agent and the Lenders.

Section 7.11     **Amendments to Closing Date Acquisition Documentation.** Without the prior written consent of the Administrative Agent, no Credit Party will amend, supplement, waive or otherwise modify, or consent or agree to any amendment, supplement, waiver or other modification to, or enter into any forbearance from exercising any rights with respect to, the terms or provisions contained in any Closing Date Acquisition Documentation, except for (a) any amendment, supplement, waiver or other modification for purposes of curing any ambiguity or correcting any provision therein that is defective or inconsistent with the Closing Date Acquisition Documentation, as the Borrower shall reasonably deem necessary or desirable and that shall not adversely affect the Secured Creditors and (b) any amendment, supplement, waiver or other modification that, in the aggregate with all other such amendments, supplements and modifications, (x) does not modify any provision of any agreement providing for an earnout or other contingent purchase price such that a larger payment would be due by any Credit Party or any payment would be required to be made by any Credit Party at any earlier date, (y) does not modify any indemnities or licenses furnished to any Credit Party such that, after giving effect thereto, such indemnities or licenses shall be less favorable to such interests of such Credit Party or the Lenders and (z) could not reasonably be expected to have a Material Adverse Effect.

Section 7.12 [Reserved].

Section 7.13 Anti-Terrorism Laws.

(a) No Credit Party nor any of their respective Subsidiaries shall be subject to or in violation of any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list, Executive Order No. 13224 or the USA Patriot Act) (including, without limitation, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury, the "Consolidated list of persons, groups and entities subject to EU financial sanctions" maintained by the European Union External Action Service and the annexes to Regulation (EU) No. 833/2014 (as amended) maintained by the European Union) that prohibits or limits the conduct of business with or the receiving of funds, goods or services to or for the benefit of certain Persons specified therein or that prohibits or limits any Lender or LC Issuer from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower or any other Credit Party.

(b) The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture, partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, (ii) in any other manner that would result in a violation of Sanctions by any Person or (iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws

Section 7.14 Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to, change its Fiscal Year end from December 31.

Section 7.15 Issuance of Disqualified Equity Interests. No Credit Party shall, nor shall it permit any of its Subsidiaries to, issue or sell any Disqualified Equity Interests.

## ARTICLE VIII.

### EVENTS OF DEFAULT

Section 8.01 Events of Default. Any of the following specified events shall constitute an Event of Default (each an "Event of Default"):

(a) Payments: the Borrower shall (i) default in the payment when due (whether at maturity, on a date fixed for a scheduled repayment, on a date on which a required prepayment is to be made, upon acceleration or otherwise) of any principal of the Loans or any reimbursement obligation in respect of any Unpaid Drawing, or in the payment within 3 Business Days of the same becoming due of any interest on the Loans, any Fees or any other Obligations; or (ii) fail to Cash Collateralize any Letter of Credit when required to do so hereunder; or

(b) Representations, etc.: any representation, warranty or statement made by the Borrower or any other Credit Party herein or in any other Loan Document or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be untrue in any material respect (without duplication as to any materiality modifiers, qualifications, or limitations applicable thereto) on the date as of which made, deemed made, or confirmed; or

(c) Certain Covenants: the Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in Sections 6.01, 6.05, 6.09, 6.10, 6.11, 6.13, 6.15 or 6.16 or Article VII of this Agreement; or

(d) Other Covenants: any Credit Party shall default in the due performance or observance by it of any term, covenant or agreement contained in this Agreement or any other Loan Document (other than those referred to in Section 8.01(a) or (b) or (c) above) and such default is not remedied within 30 days after the earlier of (i) an Authorized Officer of any Credit Party obtaining knowledge of such default or (ii) the Borrower receiving written notice of such default from the Administrative Agent or the Required Lenders (any such notice to be identified as a “notice of default” and to refer specifically to this paragraph); or

(e) Cross Default Under Other Agreements; Designated Hedge Agreements: any Credit Party or any of its Subsidiaries shall (i) default in any payment with respect to any Material Indebtedness (other than the Obligations), and such default shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material Indebtedness; or (ii) default in the observance or performance of any agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto (and all grace periods applicable to such observance, performance or condition shall have expired), or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause any such Material Indebtedness to become due prior to its stated maturity; or any such Material Indebtedness of any Credit Party or any of its Subsidiaries shall be declared to be due and payable, or shall be required to be prepaid (other than by a regularly scheduled required prepayment or redemption, prior to the stated maturity thereof); or (iii) without limitation of the foregoing clauses, default in any payment obligation under a Designated Hedge Agreement, and such default shall continue after the applicable grace period, if any, specified in such Designated Hedge Agreement or any other agreement or instrument relating thereto; or

(f) 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 under such Loan Document or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Credit Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Credit Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document or the Administrative Agent fails to have; or

(g) Invalidity of Liens: any security interest and Lien purported to be created by any Security Document shall cease to be in full force and effect (other than in accordance with the terms hereof and thereof), or shall cease to give the Administrative Agent, for the benefit of the Secured Creditors, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in such Security Document)) or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on any Collateral covered thereby;

(h) Judgments: (i) one or more judgments, orders or decrees (or any settlement of any claim that, if breached, could result in a judgment order or decree) shall be entered against any Credit Party and/or any of its Subsidiaries involving a liability (other than a liability covered by insurance, as to which the carrier has adequate claims paying ability and has not effectively reserved its rights) of \$5,000,000 or more in the aggregate for all such judgments, orders, decrees and settlements for the Credit Parties and their Subsidiaries, and any such judgments or orders or decrees or settlements shall not have been vacated, discharged or stayed or bonded pending appeal within 20 days (or such longer period, not in excess of 60 days, during which enforcement thereof, and the filing of any judgment lien, is effectively stayed or prohibited) from the entry thereof; or (ii) one or more judgments, orders, decrees or settlements shall be entered against any Credit Party and/or any of its Subsidiaries involving a required divestiture of any material properties, assets or business reasonably estimated to have a fair value in excess of \$5,000,000, and any such judgments, orders or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 20 days (or such longer period, not in excess of 60 days, during which enforcement thereof, and the filing of any judgment lien, is effectively stayed or prohibited) from the entry thereof; or

(i) Insolvency Event: any Insolvency Event shall occur with respect to any Credit Party or any of its Subsidiaries; or

(j) ERISA: any ERISA Event shall have occurred and either (i) such event or events could reasonably be expected to have a Material Adverse Effect or (ii) there shall result from any such event or events the imposition of a Lien; or

(k) Change of Control: if there occurs a Change of Control; or

(l) Cessation of Business: any cessation of a substantial part of the business of any Credit Party for a period that could reasonably be expected to have a Material Adverse Effect; or

(m) Environmental: the Borrower and its Subsidiaries shall have any Environmental Liabilities and Costs (other than Environmental Liabilities and Costs covered by insurance, as to which the carrier has adequate claims paying ability and has not effectively disclaimed coverage), the payment of which is reasonably probable and which could reasonably be expected to have a Material Adverse Effect (after taking into consideration available claims or rights of recovery that the Borrower and its Subsidiaries may have against any third-party, to the extent reasonably expected to be realized); or

(n) Subordinated Affiliate Obligations: any Affiliate of any Credit Party holding obligations of any Credit Party that are subordinated to the Obligations shall fail to perform or comply with any of the subordination provisions of any subordination agreement or other subordination document evidencing or governing such obligations; or

(o) Subordinated Indebtedness: (i) any of the Obligations for any reason shall cease to be "Senior Indebtedness" or "Designated Senior Indebtedness" (or any comparable terms) under, and as defined in, any Subordinated Debt Document, (ii) any Indebtedness other than the Obligations shall constitute "Designated Senior Indebtedness" (or any comparable term) under, and as defined in, any Subordinated Debt Document, (iii) any holder of Subordinated Indebtedness that is an Affiliate of any Credit Party shall fail to perform or comply with any of the subordination provisions of the Subordinated Debt Document evidencing or governing such Subordinated Indebtedness, or (iv) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness.

Section 8.02 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent (i) may, in its discretion, or (ii) shall, upon the written request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrower or any other Credit Party in any manner permitted under applicable law:

- (a) declare the Commitments terminated, whereupon the Commitment of each Lender shall forthwith terminate immediately without any other notice of any kind;
- (b) declare the principal of and any accrued interest in respect of all Loans, all Unpaid Drawings and all other Obligations (other than any Obligations under any Designated Hedge Agreement) owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower;
- (c) (i) terminate any Letter of Credit that may be terminated in accordance with its terms and/or (ii) require the Borrower to Cash Collateralize all or any portion of the LC Outstandings; or
- (d) exercise any other right or remedy available under any of the Loan Documents or applicable law;

*provided* that, if an Event of Default specified in Section 8.01(i) shall occur, the result that would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a), (b) and/or (c)(ii) above shall occur automatically without the giving of any such notice.

Section 8.03 Application of Certain Payments and Proceeds. All payments and other amounts received by the Administrative Agent or any Lender through the exercise of remedies hereunder or under the other Loan Documents shall, unless otherwise required by the terms of the other Loan Documents or by applicable law, be applied as follows:

- (i) *first*, to the payment of that portion of the Obligations constituting fees, indemnities and expenses and other amounts (including attorneys' fees and amounts due under Article III) payable to the Administrative Agent in its capacity as such;
- (ii) *second*, to the payment of that portion of the Obligations constituting fees, indemnities and expenses (including attorneys' fees and amounts due under Article III) payable to each Lender or each LC Issuer, ratably among them in proportion to the aggregate of all such amounts;
- (iii) *third*, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and Unpaid Drawings with respect to Letters of Credit, ratably among the Lenders in proportion to the aggregate of all such amounts;
- (iv) *fourth, pro rata* to the payment of (A) that portion of the Obligations constituting unpaid principal of the Loans and Unpaid Drawings, ratably among the Lenders and each LC Issuer in proportion to the aggregate of all such amounts, and (B) the amounts due to Designated Hedge Creditors under Designated Hedge Agreements subject to confirmation by the Administrative Agent that any calculations of termination or other payment obligations are being made in accordance with normal industry practice;

(v) *fifth*, to the Administrative Agent for the benefit of each LC Issuer to Cash Collateralize the Stated Amount of outstanding Letters of Credit;

(vi) *sixth*, to the payment of all other Obligations of the Credit Parties owing under or in respect of the Loan Documents that are then due and payable to the Administrative Agent, each LC Issuer, the Swing Line Lender, the Lenders and the Designated Hedge Creditors, ratably based upon the respective aggregate amounts of all such Obligations owing to them on such date; and

(vii) *finally*, any remaining surplus after all of the Obligations have been paid in full, to the Borrower or to whomsoever shall be lawfully entitled thereto.

**Section 8.04 Equity Cure.** Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02:

(a) For the purpose of determining whether an Event of Default under Section 7.07 has occurred, the Borrower may on one or more occasions designate any portion of the net cash proceeds from a sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Borrower or any cash contribution to the common capital of Borrower, in each case, after the Closing Date and which are contributed to the Borrower (the "Cure Amount"), as an increase to Consolidated EBITDA for the applicable fiscal quarter; provided that (A) such amounts to be designated (i) are actually received by the Borrower after the end of such fiscal quarter and on or prior to the tenth Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the "Cure Expiration Date") and (ii) do not exceed the aggregate amount necessary to cure any Event of Default under Section 7.07 as of such date and (B) the Borrower shall have provided prior written notice (the "Notice of Intent to Cure") to the Administrative Agent that such amounts are designated as a "Cure Amount" (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such net cash proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under Section 7.07 is less than the full amount of such originally designated amount). The Cure Amount shall be added to Consolidated EBITDA for the applicable fiscal quarter and included in any Testing Period that includes such fiscal quarter.

(b) The parties hereby acknowledge that this Section 8.04 may not be relied on for purposes of calculating any financial ratios other than for determining actual compliance with Section 7.07 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in Section 8.04(a) above.

(c) In furtherance of Section 8.04(a) above, (i) upon actual receipt and designation of the Cure Amount by the Borrower, the covenant under Section 7.07 shall be deemed retroactively cured with the same effect as though there had been no failure to comply with the covenant under such Section 7.07 and any Event of Default or potential Event of Default under Section 7.07 shall be deemed not to have occurred for purposes of the Loan Documents, and (ii) a Default or Event of Default shall exist until the Cure Amount is received; provided that, neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under Section 7.07 that the Borrower purports will be cured upon receipt of such Cure Amount following receipt of a Notice of Intent to Cure until and unless the Cure Expiration Date has occurred without the Cure Amount having been received.

(d) (i) In each period of four consecutive fiscal quarters, there shall be at least two fiscal quarters in which no cure right set forth in this Section 8.04 is exercised and there shall be no two consecutive fiscal quarters in which such cure right is exercised and (ii) there shall be no pro forma reduction in Indebtedness (either directly or by netting cash) with the Cure Amount for determining compliance with Section 7.07 for the fiscal quarter with respect to which such Cure Amount was made. Notwithstanding the foregoing, no Revolving Credit Lender shall be required to make any Revolving Credit Borrowing and no L/C Issuer shall be required to make any L/C Credit Extension, in each case until receipt by the Borrower of the Cure Amount.

(e) There can be no more than five fiscal quarters in which the cure rights set forth in this Section 8.04 are exercised during the term of this Agreement.

(f) The net cash proceeds of the Cure Amount shall be promptly used by the Borrower to prepay the Term Loans or, if the Term Loans have been repaid in full, the Revolving Loans accompanied by a corresponding reduction of the Revolving Commitments; provided that, the portion of the Loans prepaid with such Cure Amount shall for purposes of recalculating compliance with the financial covenants set forth in Section 7.07 for the fiscal quarter for which the cure was exercised, be deemed to remain outstanding as of the last day of the last fiscal quarter of such measurement period.

## ARTICLE IX.

### THE ADMINISTRATIVE AGENT

#### Section 9.01 Appointment.

(a) Each Lender hereby irrevocably designates and appoints the Administrative Agent to act as specified herein and in the other Loan Documents, and each such Lender hereby irrevocably authorizes KeyBank National Association as the Administrative Agent for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. The Administrative Agent agrees to act as such upon the express conditions contained in this Article. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor any fiduciary relationship with any Lender or LC Issuer, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent. The provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and no Credit Party shall have any rights as a third-party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, the Administrative Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for the Credit Parties or any of their respective Subsidiaries.

(b) Each Lender hereby further irrevocably authorizes the Administrative Agent on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty, the Security Agreement, the Collateral and any other Loan Document. Subject to Section 11.12, without further written consent or authorization from Lenders, the Administrative Agent may execute any documents or instruments necessary to (i) release any Lien (x) encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.12) have otherwise consented, or (y) upon the termination of the Commitments and the payment in full (other than contingent indemnification obligations and unasserted expense reimbursement obligations) of all Obligations and the expiration or termination of all Letters of Credit (other than those that have been Cash Collateralized or backstopped), or (ii) release any Guarantor from the Guaranty, the Security Agreement with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.12) have otherwise consented.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty or release the Security Agreement, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Lenders in accordance with the terms hereof and all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of the Secured Creditors (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale.

(d) Notwithstanding anything to the contrary herein, no Crossover Lender acting in its capacity as a Lender may make or bring any claim against the Administrative Agent or any other Lender with respect to the duties and obligations of such Person under the Loan Documents (other than claims arising from the failure of the Administrative Agent or any other Lender to make any payment to such Crossover Lender required to be made by such Person pursuant to the terms hereof).

**Section 9.02 Delegation of Duties.** The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, sub-agents or attorneys-in-fact, and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents, sub-agents or attorneys-in-fact selected by it with reasonable care except to the extent otherwise required by Section 9.03. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 9.03 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges 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 Credit Parties and the Lenders, (ii) 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, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Credit Party, any Lender or any other Person and no Credit Party, Lender or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

**Section 9.03 Exculpatory Provisions.** Neither the Administrative Agent nor any of its Related Parties shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except for its or such Related Parties' own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Credit Parties or any of their respective Subsidiaries or any of their respective officers contained in this Agreement, any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for any failure of any Credit Party or any of its officers to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Credit Parties or any of their respective Subsidiaries. The Administrative Agent shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Administrative Agent to the Lenders or by or on behalf of the Credit Parties or any of their respective Subsidiaries to the Administrative Agent or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default.

**Section 9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, e-mail or other electronic transmission, facsimile transmission, telex or teletype message, statement, order or other document or conversation believed by it, in good faith, 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 Borrower or any of its Subsidiaries), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders or all of the Lenders, as applicable, as to any matter that, pursuant to Section 11.12, can only be effectuated with the consent of all Required Lenders, or all applicable Lenders, as the case may be), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

**Section 9.05 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." If the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; *provided, however,* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**Section 9.06 Non-Reliance.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including, without limitation, any review of the affairs of the Credit Parties or their respective Subsidiaries, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and their Subsidiaries and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and their Subsidiaries. The Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial and other conditions, prospects or creditworthiness of the Credit Parties and their Subsidiaries that may come into the possession of the Administrative Agent or any of its Related Parties.

**Section 9.07 No Reliance on Administrative Agent's Customer Identification Program.** Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with the Credit Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

**Section 9.08 USA Patriot Act.** Each Lender or assignee or participant of a Lender that is not organized under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act and the applicable regulations because it is both (a) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (b) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA Patriot Act and the applicable regulations: (i) within 10 days after the Closing Date, and (ii) at such other times as are required under the USA Patriot Act.

**Section 9.09 Indemnification; Limitation of Liability.** The Lenders agree to indemnify the Administrative Agent and its Related Parties, ratably according to their *pro rata* share of the Aggregate Credit Facility Exposure (excluding Swing Loans), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against the Administrative Agent or such Related Parties in any way relating to or arising out of this Agreement or any other Loan Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by the Administrative Agent or such Related Parties under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by the Borrower; *provided, however,* that no Lender shall be liable to the Administrative Agent or any of its Related Parties for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting solely from the Administrative Agent's or such Related Parties' 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 Administrative Agent or any such Related Parties for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 9.09 shall survive the payment of all Obligations.

Section 9.10 The Administrative Agent in Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Credit Parties, their respective Subsidiaries and their Affiliates as though not acting as Administrative Agent hereunder. With respect to the Loans made by it and all Obligations owing to it, the Administrative Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms “Lender” and “Lenders” shall include the Administrative Agent in its individual capacity.

Section 9.11 Successor Administrative Agent. The Administrative Agent may resign at any time upon not less than 30 days’ notice to the Lenders, each LC Issuer and the Borrower. Any resignation by KeyBank National Association as Administrative Agent pursuant to this Section 9.11 shall also constitute its resignation as LC Issuer. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. 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 each LC Issuer, appoint a successor Administrative Agent; *provided, however,* that if the Administrative Agent shall notify the Borrower and the Lenders that no such successor is willing to accept such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or any LC Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) 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 LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.02 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.12 Other Agents. Any Lender identified herein as a syndication agent, documentation agent, lead arranger, arranger, bookrunner or any other corresponding title, other than “Administrative Agent,” shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any other Loan Document except those applicable to all Lenders as such. Each Lender acknowledges that it has not relied, and will not rely, on any Lender so identified in deciding to enter into this Agreement or in taking or not taking any action hereunder.

**Section 9.13 Agency for Perfection.** The Administrative Agent and each Lender hereby appoints the Administrative Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and the Administrative Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Administrative Agent and the Lenders as secured party. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or in accordance with the Administrative Agent's instructions. Without limiting the generality of the foregoing, each Lender hereby appoints the Administrative Agent for the purpose of perfecting the Administrative Agent's Liens on deposit accounts or securities accounts of any Credit Party. Each Credit Party by its execution and delivery of this Agreement hereby consents to the foregoing.

**Section 9.14 Proof of Claim.** The Lenders and the Borrower hereby agree that after the occurrence of an Event of Default pursuant to Section 8.01(i), in case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or any of the Guarantors, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower or any of the Guarantors) shall be entitled and empowered, by intervention in such proceeding or otherwise:(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their agents and counsel and all other amounts due the Lenders and the Administrative Agent hereunder) allowed in such judicial proceeding; and

- (b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, administrator, sequestrator, examiner or other similar official in any such judicial proceeding is hereby authorized by each Lender 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, 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 and other agents hereunder. Nothing herein contained shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding. Further, nothing contained in this Section 9.14 shall affect or preclude the ability of any Lender to (i) file and prove such a claim in the event that the Administrative Agent has not acted within ten (10) days prior to any applicable bar date and (ii) require an amendment of the proof of claim to accurately reflect such Lender's outstanding Obligations.

**Section 9.15 Posting of Approved Electronic Communications.**

(a) **Delivery of Communications.** Each Credit Party hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to such Credit Party that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent or to the Lenders pursuant to the Loan Documents, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Notice of Borrowing or a Notice of Continuation or Conversion, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Loan or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, each Credit Party agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

(b) Platform. Each Credit Party further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on DebtDomain or a substantially similar electronic transmission system (the “Platform”).

(c) No Warranties as to Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE INDEMNITEES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. 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 THE INDEMNITEES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE INDEMNITEES HAVE ANY LIABILITY TO ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY INDEMNITEES IS FOUND IN A FINAL, NON-APPEALABLE ORDER BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH INDEMNITEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) Delivery Via Platform. The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its electronic mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender’s electronic mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such electronic mail address.

(e) No Prejudice to Notice Rights. Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 9.16 Credit Bidding. Each Lender hereby irrevocably authorizes the Administrative Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 thereof, at any sale thereof conducted under the provisions of the Bankruptcy Code (including Section 363 of the Bankruptcy Code) or any applicable bankruptcy, insolvency, reorganization or other similar law (whether domestic or foreign, and including any Debtor Relief Laws) now or hereafter in effect, or at any sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law.

Section 9.17 ERISA.

(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 each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**Section 9.18 Withholding Taxes.** To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 3.02 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For purposes of this Section 9.18, the term "Lender" includes any LC Issuer.

**Section 9.19 Resignation/Replacement of LC Issuer.** Notwithstanding anything to the contrary contained herein, any LC Issuer or Swing Line Lender may, upon sixty (60) days' notice to the Borrower and the Lenders, resign as an LC Issuer or Swing Line Lender, respectively. For the avoidance of doubt, in the event of any such resignation of an LC Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor LC Issuer or Swing Line Lender hereunder, provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant LC Issuer or the Swing Line Lender, as the case may be. If an LC Issuer resigns as an LC Issuer, it shall retain all the rights and obligations of an LC Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an LC Issuer and all Obligations with respect thereto (including the right to require the Lenders to make Loans or fund risk participations in LC Outstandings). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Loans or fund risk participations in outstanding Swing Loans.

## ARTICLE X.

### GUARANTY

Section 10.01 Guaranty by the Borrower. The Borrower hereby irrevocably and unconditionally guarantees, for the benefit of the Benefited Creditors, all of the following (collectively, the “Borrower Guaranteed Obligations”): (a) all reimbursement obligations and Unpaid Drawings with respect to Letters of Credit issued for the benefit of any LC Obligor (other than the Borrower) under this Agreement, (b) any Banking Services Obligations, and (c) all amounts, indemnities and reimbursement obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing owing by any Subsidiary of the Borrower under any Designated Hedge Agreement or any other document or agreement executed and delivered in connection therewith to any Designated Hedge Creditor, in each case, other than any Excluded Swap Obligations, and in all cases under subparts (a), (b) or (c) above, whether now existing, or hereafter incurred or arising, including any such interest or other amounts incurred or arising during the pendency of any bankruptcy, insolvency, reorganization, receivership or similar proceeding (including any Debtor Relief Law), regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code or under any Debtor Relief Law). Such guaranty is an absolute, unconditional, present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from any Subsidiary or Affiliate of the Borrower, or any other action, occurrence or circumstance whatsoever. Upon failure by any Credit Party to pay punctually any of the Borrower Guaranteed Obligations, the Borrower shall forthwith on demand by the Administrative Agent pay the amount not so paid at the place and in the currency and otherwise in the manner specified in this Agreement or any other applicable agreement or instrument.

Section 10.02 Additional Undertaking. As a separate, additional and continuing obligation, the Borrower unconditionally and irrevocably undertakes and agrees, for the benefit of the Benefited Creditors that, should any Borrower Guaranteed Obligations not be recoverable from the Borrower under Section 10.01 for any reason whatsoever (including, without limitation, by reason of any provision of any Loan Document or any other agreement or instrument executed in connection therewith being or becoming void, unenforceable, or otherwise invalid under any applicable law) then, notwithstanding any notice or knowledge thereof by any Lender, the Administrative Agent, any of their respective Affiliates, or any other person, at any time, the Borrower as sole, original and independent obligor, upon demand by the Administrative Agent, will make payment to the Administrative Agent, for the account of the Benefited Creditors, of all such obligations not so recoverable by way of full indemnity, in such currency and otherwise in such manner as is provided in the Loan Documents or any other applicable agreement or instrument.

Section 10.03 Guaranty Unconditional. The obligations of the Borrower under this Article X shall be unconditional and absolute and, without limiting the generality of the foregoing shall not be released, discharged or otherwise affected by the occurrence, one or more times, of any of the following:

- (a) any extension, renewal, settlement, compromise, waiver or release in respect to the Borrower Guaranteed Obligations under any agreement or instrument, by operation of law or otherwise;
- (b) any modification or amendment of or supplement to this Agreement, any Note, any other Loan Document, or any agreement or instrument evidencing or relating to any Borrower Guaranteed Obligation;
- (c) any release, non-perfection or invalidity of any direct or indirect security for the Borrower Guaranteed Obligations under any agreement or instrument evidencing or relating to any Borrower Guaranteed Obligations;
- (d) any change in the corporate existence, structure or ownership of any Credit Party or other Subsidiary or any insolvency, bankruptcy, reorganization or other similar proceeding (including any Debtor Relief Law) affecting any Credit Party or other Subsidiary or its assets or any resulting release or discharge of any obligation of any Credit Party or other Subsidiary contained in any agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations;

(e) the existence of any claim, set-off or other rights that the Borrower may have at any time against any other Credit Party, the Administrative Agent, any Lender, any Affiliate of any Lender or any other Person, whether in connection herewith or any unrelated transactions;

(f) any invalidity or unenforceability relating to or against any other Credit Party for any reason of any agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations, or any provision of applicable law or regulation purporting to prohibit the payment by any Credit Party of any of the Borrower Guaranteed Obligations; or

(g) any other act or omission of any kind by any other Credit Party, the Administrative Agent, any Lender or any other Person or any other circumstance whatsoever that might, but for the provisions of this Article, constitute a legal or equitable discharge of the Borrower's obligations under this Section other than the irrevocable payment in full of all Borrower Guaranteed Obligations.

**Section 10.04 Borrower Obligations to Remain in Effect; Restoration.** The Borrower's obligations under this Article X shall remain in full force and effect until the Commitments shall have terminated, and the principal of and interest on the Notes and other Borrower Guaranteed Obligations, and all other amounts payable by the Borrower, any other Credit Party or other Subsidiary, under the Loan Documents or any other agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations, shall have been paid in full. If at any time any payment of any of the Borrower Guaranteed Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of such Credit Party (including any Debtor Relief Law), the Borrower's obligations under this Article with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

**Section 10.05 Waiver of Acceptance, etc.** The Borrower irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against any other Credit Party or any other Person, or against any collateral or guaranty of any other Person.

**Section 10.06 Subrogation.** Until the indefeasible payment in full of all of the Obligations and the termination of the Commitments hereunder, the Borrower shall have no rights, by operation of law or otherwise, upon making any payment under this Section 10.06 to be subrogated to the rights of the payee against any other Credit Party with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by any such Credit Party in respect thereof.

**Section 10.07 Effect of Stay.** In the event that acceleration of the time for payment of any amount payable by any Credit Party under any of the Borrower Guaranteed Obligations is stayed upon insolvency, bankruptcy or reorganization of such Credit Party (including any Debtor Relief Law), all such amounts otherwise subject to acceleration under the terms of any applicable agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations shall nonetheless be payable by the Borrower under this Article forthwith on demand by the Administrative Agent.

**Section 10.08 Keepwell.** The Borrower, to the extent it is a Qualified ECP Guarantor, hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by the Borrower to honor all of its obligations under this Article X in respect of Designated Hedge Agreements (provided, however, that the Borrower shall only be liable under this Section 10.08 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.08, or otherwise under this Article X, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Borrower under this Section 10.08 shall remain in full force and effect until payment in full of all of the Obligations and the termination of the Commitments hereunder. The Borrower intends that this Section 10.08 constitute, and this Section 10.08 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## ARTICLE XI.

### MISCELLANEOUS

Section 11.01 Payment of Expenses etc. Each Credit Party agrees to pay (or reimburse the Administrative Agent, the Lenders or their Affiliates, as the case may be) all of the following: (i) whether or not the transactions contemplated hereby are consummated, for all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the negotiation, preparation, syndication, administration and execution and delivery of the Loan Documents and the documents and instruments referred to therein and the syndication of the Commitments, including without limitation all out-of-pocket expenses and legal fees of counsel to the Administrative Agent and the Lead Arrangers; (ii) all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with any amendment, waiver or consent relating to any of the Loan Documents, including all out-of-pocket expenses and legal fees of counsel; (iii) all reasonable out-of-pocket costs and expenses of the Administrative Agent, the Lenders and their Affiliates in connection with the enforcement of any of the Loan Documents or the other documents and instruments referred to therein, including, without limitation, the reasonable fees and disbursements of any individual counsel to the Administrative Agent and any Lender (including, without limitation, allocated costs of internal counsel); (iv) any and all present and future stamp and other similar taxes with respect to the foregoing matters and save the Administrative Agent and each of the Lenders harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to any such indemnified Person) to pay such taxes; (v) all the actual costs and expenses of creating and perfecting Liens in favor of the Administrative Agent, for the benefit of Secured Creditors, including filing and recording fees, expenses and amounts owed pursuant to Article III, search fees, title insurance premiums and fees, expenses and disbursements of counsel to the Administrative Agent and of counsel providing any opinions that the Administrative Agent or the Required Lenders may request in respect of the Collateral or the Liens created pursuant to the Security Documents; (vi) all the actual costs and fees, expenses and disbursements of any auditors, accountants, consultants or appraisers whether internal or external; and (vii) all the actual costs and expenses (including the fees, expenses and disbursements of counsel (including allocated costs of internal counsel) and of any appraisers, consultants, advisors and agents employed or retained by the Administrative Agent and its counsel) in connection with the custody or preservation of any of the Collateral.

Section 11.02 Indemnification. Each Credit Party agrees to indemnify the Administrative Agent, each LC Issuer, each Lender, each Arranger and their respective Related Parties (collectively, the "Indemnitees") from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses reasonably incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of (i) any investigation, litigation or other proceeding (whether or not any Indemnitee is a party thereto and whether or not such proceeding is brought by the Borrower or any third party) related to the entering into and/or performance of any Loan Document or the use of the proceeds of any Loans hereunder or the consummation of any transactions contemplated in any Loan Document or any other Transaction Document, other than any such investigation, litigation or proceeding arising out of transactions solely between any of the Lenders or the Administrative Agent, transactions solely involving the assignment by a Lender of all or a portion of its Loans and Commitments, or the granting of participations therein, as provided in this Agreement, or arising solely out of any examination of a Lender by any regulatory or other Governmental Authority having jurisdiction over it that is not in any way related to the entering into and/or performance of any Loan Document, or (ii) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any Real Property owned, leased or at any time operated by the Credit Parties or any of their respective Subsidiaries, the release, generation, storage, transportation, handling or disposal of Hazardous Materials at any location, whether or not owned or operated by the Credit Parties or any of their respective Subsidiaries, if the Borrower or any such Subsidiary could have or is alleged to have any responsibility in respect thereof, the non-compliance of any such Real Property with foreign, federal, state and local laws, regulations and ordinances (including applicable permits thereunder) applicable thereto, or any Environmental Claim asserted against any Credit Party or any of their respective Subsidiaries, in respect of any such Real Property, including, in the case of each of (i) and (ii) above, without limitation, the reasonable documented fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses of any Indemnitee to the extent incurred by reason of the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final non-appealable judgment of a court of competent jurisdiction). To the extent that the undertaking to indemnify, pay or hold harmless any Person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Credit Party shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities that is permissible under applicable law.

Section 11.03 Right of Setoff. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Lender and each LC Issuer is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by such Lender or such LC Issuer (including, without limitation, by branches, agencies and Affiliates of such Lender or LC Issuer wherever located) to or for the credit or the account of any Credit Party against and on account of the Obligations and liabilities of any Credit Party to such Lender or LC Issuer under this Agreement or under any of the other Loan Documents, including, without limitation, all claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not such Lender or LC Issuer shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the LC Issuers, 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. Each Lender and LC Issuer agrees to promptly notify the Borrower after any such set off and application, *provided, however*, that the failure to give such notice shall not affect the validity of such set off and application.

Section 11.04 Equalization.

(a) Equalization. If at any time any Lender receives any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Loan Documents, or otherwise) that is applicable to the payment of the principal of, or interest on, the Loans (other than Swing Loans), LC Participations, Swing Loan Participations or Fees (other than Fees that are intended to be paid solely to the Administrative Agent or an LC Issuer and amounts payable to a Lender under Article III), of a sum that with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, *then* such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount. The provisions of this Section 11.04(a) shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Outstandings to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

(b) Recovery of Amounts. If any amount paid to any Lender pursuant to subpart (a) above is recovered in whole or in part from such Lender, such original purchase shall be rescinded, and the purchase price restored ratably to the extent of the recovery.

(c) Consent of Borrower. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

#### Section 11.05 Notices.

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subpart (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to the Borrower or any other Credit Party, to it at 63 Second Avenue, Burlington, MA, 01803, Attention: Chief Financial Officer; Facsimile No.: 781-425-5049; Email: banknotice@lemaire.com with a copy to legal@lemaire.com;

(ii) if to the Administrative Agent, to it at the Notice Office; and

(iii) if to a Lender, to it at its address (or facsimile number) set forth next to its name on the signature pages hereto or, in the case of any Lender that becomes a party to this Agreement by way of assignment under Section 11.04 of this Agreement, to it at the address set forth in the Assignment Agreement to which it is a party;

(b) Receipt of Notices. Notices and 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 sent by facsimile shall be deemed to have been given when sent and receipt has been confirmed by telephone. Notices delivered through electronic communications to the extent provided in subpart (c) below shall be effective as provided in said subpart (c).

(c) Electronic Communications. Notices and other communications to the Administrative Agent, an LC Issuer or any Lender hereunder and required to be delivered pursuant to Section 6.01 may be delivered or furnished by electronic communication (including e-mail and Internet or intranet web sites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent and the Borrower may, in their discretion, agree in a separate writing to accept notices and other communications to them 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 acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet web site 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 web site address therefor.

(d) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to each of the other parties hereto in accordance with Section 11.05(a).

Section 11.06 Successors and Assigns.

(a) Successors and Assigns Generally. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; *provided, however*, that the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of all the Lenders, *provided, further*, that any assignment or participation by a Lender of any of its rights and obligations hereunder shall be effected in accordance with this Section 11.06.

(b) Participations. Each Lender may at any time grant participations in any of its rights hereunder or under any of the Notes to an Eligible Assignee, an Eligible Participant or any other Person, *provided* that in the case of any such participation,

(i) the participant shall not have any rights under this Agreement or any of the other Loan Documents, including rights of consent, approval or waiver (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto),

(ii) such Lender's obligations under this Agreement (including, without limitation, its Commitments hereunder) shall remain unchanged,

(iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations,

(iv) such Lender shall remain the holder of the Obligations owing to it and of any Note issued to it for all purposes of this Agreement, and

(v) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with the selling Lender in connection with such Lender's rights and obligations under this Agreement,

and, *provided, further*, that no Lender shall transfer, grant or sell any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Loan Document except to the extent (A) such participant is an Affiliate or an Approved Fund of the Lender granting the participations or (B) such amendment or waiver would (x) extend the final scheduled maturity of the date of any Scheduled Repayment of any of the Loans in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of the applicability of any post-default increase in interest rates), or reduce the principal amount thereof, or increase such participant's participating interest in any Commitment over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of any such Commitment), (y) release all or any substantial portion of the Collateral, or release any guarantor from its guaranty of any of the Obligations, except in accordance with the terms of the Loan Documents, or (z) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and, *provided still further that* each participant shall be entitled to the benefits of Section 3.03 with respect to its participation as if it was a Lender, except that a participant shall (i) only deliver the forms described in Section 3.03(g) to the Lender granting it such participation and (ii) not be entitled to receive any greater payment under Section 3.03(g) than the applicable Lender would have been entitled to receive absent the participation, except to the extent such entitlement to a greater payment arose from a Change in Law occurring after the participant became a participant hereunder.

In the event that any Lender sells participations in a Loan, such Lender shall, acting for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name of all participants in such Loan and the principal amount of (and stated interest on) the portion of such Loan that is the subject of the participation (the “Participant Register”). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and each Lender shall treat each person whose name is recorded in the Participant Register as the owner of the participation in question for all purposes of this Agreement notwithstanding any notice to the contrary. A Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of a Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice; *provided*, however, 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 Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(c) Assignments by Lenders.

(i) Any Lender may assign all, or if less than all, a fixed portion, of its Loans, LC Participations, Swing Loan Participations and/or Commitments and its rights and obligations hereunder to one or more Eligible Assignees, each of which shall become a party to this Agreement as a Lender by execution of an Assignment Agreement; *provided*, however, that:

(A) except in the case of (x) an assignment of the entire remaining amount of the assigning Lender’s Loans and/or Commitments or (y) an assignment to another Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender, the aggregate amount of the Commitment so assigned (which for this purpose includes the Loans outstanding thereunder) shall not be less than \$1,000,000;

(B) in the case of any assignment to an Eligible Assignee at the time of any such assignment the Lender Register shall be deemed modified to reflect the Commitments of such new Lender and of the existing Lenders;

(C) upon surrender of the old Notes, if any, upon request of the new Lender, new Notes will be issued, at the Borrower’s expense, to such new Lender and to the assigning Lender, to the extent needed to reflect the revised Commitments; and

(D) unless waived by the Administrative Agent, the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500.

(ii) To the extent of any assignment pursuant to this subpart (c), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(iii) At the time of each assignment pursuant to this subpart (c), to a Person that is not already a Lender hereunder and that is not a U.S. Person for Federal income tax purposes, the respective assignee Lender shall provide to the Borrower and the Administrative Agent the applicable Internal Revenue Service Forms (and any necessary additional documentation) described in Section 3.03(g).

(iv) With respect to any Lender, the transfer of any Commitment of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitment shall not be effective until such transfer is recorded on the Lender Register maintained by the Administrative Agent (on behalf of and acting solely for this purpose as a non-fiduciary agent of the Borrower) with respect to ownership of such Commitment and Loans, including the name and address of the Lenders and the principal amount of the Loans (and stated interest thereon). Prior to such recordation, all amounts owing to the transferor with respect to such Commitment and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Lender Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment Agreement pursuant to this subpart (c). The Lender Register shall be available for the inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice.

(v) Nothing in this Section shall prevent or prohibit (A) any Lender that is a bank, trust company or other financial institution from pledging its Notes or Loans to a Federal Reserve Bank or to any Person that extends credit to such Lender in support of borrowings made by such Lender from such Federal Reserve Bank or such other Person, or (B) any Lender that is a trust, limited liability company, partnership or other investment company from pledging its Notes or Loans to a trustee or agent for the benefit of holders of certificates or debt securities issued by it. No such pledge, or any assignment pursuant to or in lieu of an enforcement of such a pledge, shall relieve the transferor Lender from its obligations hereunder.

(vi) 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, each LC Issuer, each Swing Line Lender and each other 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 and Swing Loans in accordance with its Revolving Facility 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.

(d) No SEC Registration or Blue Sky Compliance. Notwithstanding any other provisions of this Section, no transfer or assignment of the interests or obligations of any Lender hereunder or any grant of participation therein shall be permitted if such transfer, assignment or grant would require the Borrower to file a registration statement with the SEC or to qualify the Loans under the “Blue Sky” laws of any State.

(e) Representations of Lenders. Each Lender initially party to this Agreement hereby represents, and each Person that becomes a Lender pursuant to an assignment permitted by this Section will, upon its becoming party to this Agreement, represents that it is a commercial lender, other financial institution or other “accredited” investor (as defined in SEC Regulation D) that makes or acquires loans in the ordinary course of its business and that it will make or acquire Loans for its own account in the ordinary course of such business; *provided, however,* that subject to the preceding Section 11.06(b) and (c), the disposition of any promissory notes or other evidences of or interests in Indebtedness held by such Lender shall at all times be within its exclusive control.

(f) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (“Granting Lender”) may grant to a special purpose funding vehicle (a “SPC”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (x) nothing herein shall constitute a commitment by any SPC to make any Loans and (y) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this clause, any SPC may (i) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section may not be amended without the written consent of the SPC. The Borrower acknowledges and agrees, subject to the next sentence, that, to the fullest extent permitted under applicable law, each SPC, for purposes of Sections 2.10, 2.14, 3.01, 3.03, 11.01, 11.02 and 11.03, shall be considered a Lender.

Section 11.07 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any other Loan Document and no course of dealing between the Borrower and the Administrative Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent or the Lenders to any other or further action in any circumstances without notice or demand. Without limiting the generality of the foregoing, the making of a Loan or any LC Issuance shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any LC Issuer may have had notice or knowledge of such Default or Event of Default at the time. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Administrative Agent or any Lender would otherwise have.

Section 11.08 Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial.

(a) **THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT (OTHER THAN THE LETTERS OF CREDIT, TO THE EXTENT SPECIFIED BELOW, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN A LOAN DOCUMENT) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT OR, IF NO LAWS OR RULES ARE SO DESIGNATED, THE INTERNATIONAL STANDBY PRACTICES (ISP98 — INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NUMBER 590 (THE “ISP98 RULES”)) AND, AS TO MATTERS NOT GOVERNED BY THE ISP98 RULES, THE LAW OF THE STATE OF NEW YORK.**

(b) **EACH CREDIT PARTY HEREBY IRREVOCABLY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN IN ANY LITIGATION OR OTHER PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE LC ISSUER OR THE CREDIT PARTIES IN CONNECTION HEREWITH OR THEREWITH; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT’S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND; PROVIDED, FURTHER, THAT NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE LC ISSUER TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.**

(c) **EACH CREDIT PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 11.05. EACH CREDIT PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO IN CLAUSE (b) ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY CREDIT PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH CREDIT PARTY HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THE LOAN DOCUMENTS. EACH CREDIT PARTY HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) THE ADMINISTRATIVE AGENT, EACH LENDER, THE LC ISSUER AND EACH CREDIT PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, SUCH LENDER, THE LC ISSUER OR SUCH CREDIT PARTY IN CONNECTION THEREWITH. EACH CREDIT PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT, EACH LENDER AND THE LC ISSUER ENTERING INTO THE LOAN DOCUMENTS.

Section 11.09 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same agreement. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent.

Section 11.10 Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent, for its own account and benefit and/or for the account, benefit of, and distribution to, the Lenders, constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof or thereof. To the extent that there is any conflict between the terms and provisions of this Agreement and the terms and provisions of any other Loan Document, the terms and provisions of this Agreement will prevail.

Section 11.11 Headings Descriptive. The headings of the several Sections and other portions of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 11.12 Amendment or Waiver; Acceleration by Required Lenders.

(a) Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, changed, waived or otherwise modified unless such amendment, change, waiver or other modification is in writing and signed by the Borrower, the Administrative Agent, and the Required Lenders or by the Administrative Agent acting at the written direction of the Required Lenders; *provided, however,* that

(i) no change, waiver or other modification shall:

(A) increase the amount of any Commitment of any Lender hereunder, without the written consent of such Lender;

(B) extend or postpone the Revolving Facility Termination Date, the Term Loan Maturity Date or the maturity date provided for herein that is applicable to any Loan of any Lender, extend or postpone the expiration date of any Letter of Credit as to which such Lender is an LC Participant beyond the latest expiration date for a Letter of Credit provided for herein, or extend or postpone any scheduled expiration or termination date provided for herein that is applicable to a Commitment of any Lender, without the written consent of such Lender;

(C) reduce the principal amount of any Loan made by any Lender, or reduce the rate or extend, defer or delay the time of payment of, or excuse the payment of, principal or interest thereon (other than as a result of (x) waiving the applicability of any post-default increase in interest rates or (y) any amendment or modification of defined terms used in financial covenants), without the written consent of such Lender;

(D) reduce the amount of any Unpaid Drawing as to which any Lender is an LC Participant, or reduce the rate or extend the time of payment of, or excuse the payment of, interest thereon (other than as a result of waiving the applicability of any post-default increase in interest rates), without the written consent of such Lender; or

(E) reduce the rate or extend the time of payment of, or excuse the payment of, any Fees to which any Lender is entitled hereunder, without the written consent of such Lender; and

(ii) no change, waiver or other modification or termination shall, without the written consent of each Lender affected thereby,

(A) release the Borrower from any of its obligations hereunder or consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement;

(B) release the Borrower from its guaranty obligations under Article X or release any Credit Party from the Guaranty, *except*, in the case of a Guarantor, (x) in accordance with a transaction permitted under this Agreement or (y) to the extent that the release of such Guarantor would not result in the release of Guarantors having a value, in the aggregate, that constitutes all or substantially all of the value, in the aggregate, of the Guarantors;

(C) release all or substantially all of the Collateral or all or substantially all of the value of the Guarantors, *except* in connection with a transaction permitted under this Agreement;

(D) amend, modify or waive any provision of this Section 11.12, Section 8.03, or any other provision of any of the Loan Documents pursuant to which the consent or approval of all Lenders, or a number or specified percentage or other required grouping of Lenders or Lenders having Commitments, is by the terms of such provision explicitly required;

- (E) reduce the percentage specified in, or otherwise modify, the definition of Required Lenders; or
- (F) amend, modify or waive any provision of Section 2.07(b), Section 2.14(b) or Section 2.14(e).

Any waiver or consent with respect to this Agreement given or made in accordance with this Section shall be effective only in the specific instance and for the specific purpose for which it was given or made.

(b) No provision of Section 2.05 or any other provision in this Agreement specifically relating to Letters of Credit may be amended without the consent of any LC Issuer adversely affected thereby.

(c) No provision of Article IX may be amended without the consent of the Administrative Agent and no provision of Section 2.04 may be amended without the consent of the Swing Line Lender.

(d) To the extent the Required Lenders (or all of the Lenders, as applicable, as shall be required by this Section) waive the provisions of Section 7.02 with respect to the sale, transfer or other disposition of any Collateral, or any Collateral is sold, transferred or disposed of as permitted by Section 7.02, (i) such Collateral (but not any proceeds thereof) shall be sold, transferred or disposed of free and clear of the Liens created by the respective Security Documents; (ii) if such Collateral includes all of the capital stock of a Subsidiary that is a Guarantor or whose stock is pledged pursuant to the Security Agreement, such capital stock (but not any proceeds thereof) shall be released from the Security Agreement and such Subsidiary shall be released as a Guarantor; and (iii) the Administrative Agent shall be authorized to take actions deemed appropriate by it in order to effectuate the foregoing.

(e) In no event shall the Required Lenders, without the prior written consent of each Lender, direct the Administrative Agent to accelerate and demand payment of the Loans held by one Lender without accelerating and demanding payment of all other Loans or to terminate the Commitments of one or more Lenders without terminating the Commitments of all Lenders. Each Lender agrees that, except as otherwise provided in any of the Loan Documents and without the prior written consent of the Required Lenders, it will not take any legal action or institute any action or proceeding against any Credit Party with respect to any of the Obligations or Collateral, or accelerate or otherwise enforce its portion of the Obligations. Without limiting the generality of the foregoing, none of Lenders may exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, uniform commercial code sales or other similar sales or dispositions of any of the Collateral except as authorized by the Required Lenders. Notwithstanding anything to the contrary set forth in this Section 11.12(e) or elsewhere herein, each Lender shall be authorized to take such action to preserve or enforce its rights against any Credit Party where a deadline or limitation period is otherwise applicable and would, absent the taking of specified action, bar the enforcement of Obligations held by such Lender against such Credit Party, including the filing of proofs of claim in any insolvency proceeding.

(f) Notwithstanding anything to the contrary contained in this Section 11.12, (x) Security Documents (including any Additional Security Documents) and related documents executed by Subsidiaries of the Borrower in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and waived with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities, omissions, mistakes or defects or (iii) to cause such Security Document or other document to be consistent with this Agreement and the other Loan Documents and (y) if following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

(g) If, in connection with any proposed amendment, modification, termination, waiver or consent with respect to any provisions hereof as contemplated by this Section 11.12 that requires the consent of a greater percentage of the Lenders than the Required Lenders, the consent of the Required Lenders shall have been obtained but the consent of a Lender whose consent is required shall not have been obtained (each a “Non-Consenting 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 the restrictions contained in Section 11.04(c)), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations; *provided* that (A) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Section 3.02 and any amounts accrued and owing to such Lender under Section 3.01(a)(i), Section 3.01(c), Section 3.03 or Section 3.04), and (C) such Eligible Assignee shall consent at the time of such assignment to each matter in respect of which such Non-Consenting Lender did not consent. Each Lender agrees that, if it becomes a Non-Consenting Lender and is being replaced in accordance with this Section 11.12(f), it shall execute and deliver to the Administrative Agent an Assignment Agreement to evidence such assignment and shall deliver to the Administrative Agent any Notes previously delivered to such Non-Consenting Lender. A Lender shall not be required to make any such assignment and 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.

(h) Notwithstanding anything to the contrary contained in this Section 11.12, no Crossover Lender shall have any right in its capacity as a Lender to (i) consent to any amendment, modification, waiver, consent or other such action (each, a “Consent”) with respect to any of the terms of this Agreement or any other Loan Document, except for any Consent of the manner set forth in Section 11.12(a)(i)(A)(1) and Section 11.12(a)(i)(C) above, (ii) require the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to this Agreement or any other Loan Document, (iii) otherwise vote on any matter related to this Agreement or any other Loan Document except as specifically provided in this Section 11.12(h), (iv) attend any “Lender only” meeting with the Administrative Agent or any Lender or receive any “Lender only” information from the Administrative Agent or any Lender, and (v) make or bring any claim, in its capacity as a Lender, against the Administrative Agent or any Lender with respect to the duties and obligations of such Persons under the Loan Documents (other than claims directly arising from the failure of the Administrative Agent or any Lender to make payments to such Crossover Lender required to be made by such Person pursuant to the terms hereof). Upon the occurrence of and during the pendency of any Insolvency Event of which any Credit Party is the subject, each Crossover Lender (A) shall, solely in its capacity as a Lender, not exercise any voting or consent rights of such Person under the Bankruptcy Code or other insolvency law with respect to any matter requiring the vote or consent of the Lenders and arising during the pendency of any such bankruptcy case or other insolvency proceeding (including, without limitation, any right to vote to accept or reject any plan of reorganization or other restructuring plan filed in any such bankruptcy case or other insolvency proceeding, and any right to consent to any sale of Collateral pursuant to section 363 of the Bankruptcy Code), and shall be deemed to have granted (and hereby grants) the Administrative Agent an irrevocable power of attorney entitling the Administrative Agent to exercise any such voting or consent rights of such Person under the Bankruptcy Code or other insolvency law in the manner directed by the Administrative Agent (it being understood that the Administrative Agent shall exercise such power of attorney at the direction of the Required Lenders to the extent the Required Lenders so direct the Administrative Agent in writing), and such power of attorney shall be coupled with an interest; *provided, however* that Crossover Lenders shall retain the right to exercise any such voting or consent rights if and to the extent the matter subject to such voting or consent rights would disproportionately and adversely affect the rights of such Crossover Lender in relations to the rights of all other Lenders, and (B) shall execute and deliver such instruments and documents, and shall take such action, as may be reasonably requested by the Administrative Agent from time to time, to memorialize or effectuate such power of attorney or the exercise of such Person’s voting or consent rights accordance with clause (A) of this sentence.

(i) No Lender consent shall be required to effect an Incremental Amendment except as expressly provided in Section 2.17. In connection therewith, the Borrower, the Administrative Agent and the Lenders providing the Incremental Term Loan Commitments or Incremental Revolving Credit Commitments, as applicable, may 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 clause shall supersede any provisions of this Agreement to the contrary.

Section 11.13 Survival of Indemnities. All indemnities set forth herein including, without limitation, in Article III, Section 9.09 or Section 11.02 shall survive the execution and delivery of this Agreement and the making and repayment of the Obligations.

Section 11.14 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any branch office, subsidiary or affiliate of such Lender; *provided, however*, that the Borrower shall not be responsible for costs arising under Section 3.01 resulting from any such transfer (other than a transfer pursuant to Section 3.05) to the extent not otherwise applicable to such Lender prior to such transfer.

Section 11.15 Confidentiality.

(a) Each of the Administrative Agent, each LC Issuer and the Lenders agrees to maintain the confidentiality of the Confidential Information, *except* that Confidential Information may be disclosed (1) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential), (2) to any direct or indirect contractual counterparty in any Hedge Agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section, (3) to the extent requested by any regulatory authority, (4) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (5) to any other party to this Agreement, (6) to any other creditor of any Credit Party that is a direct or intended beneficiary of any of the Loan Documents, (7) in connection with the exercise of any remedies hereunder or under any of the other Loan Documents, or any suit, action or proceeding relating to this Agreement or any of the other Loan Documents or the enforcement of rights hereunder or thereunder, (8) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in any of its rights or obligations under this Agreement, or in connection with transactions permitted pursuant to Section 11.06(c)(v) or Section 11.06(f), (9) with the consent of the Borrower, or (10) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 11.15, or (ii) becomes available to the Administrative Agent, any LC Issuer or any Lender on a non-confidential basis from a source other than a Credit Party and not otherwise in violation of this Section 11.15.

(b) As used in this Section, “Confidential Information” means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, any LC Issuer or any Lender on a non-confidential basis prior to disclosure by the Borrower; *provided, however,* that, in the case of information received from the Borrower after the Closing Date, such information is clearly identified at the time of delivery as confidential.

(c) Any Person required to maintain the confidentiality of Confidential 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 Confidential Information as such Person would accord to its own confidential information. The Borrower hereby agrees that the failure of the Administrative Agent, any LC Issuer or any Lender to comply with the provisions of this Section shall not relieve the Borrower, or any other Credit Party, of any of its obligations under this Agreement or any of the other Loan Documents.

Section 11.16 Limitations on Liability of the LC Issuers. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither any LC Issuer nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by an LC Issuer against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, *except* that the LC Obligor shall have a claim against an LC Issuer, and an LC Issuer shall be liable to such LC Obligor, to the extent of any direct, but not consequential, damages suffered by such LC Obligor that such LC Obligor proves were caused by (i) such LC Issuer’s willful misconduct or gross negligence in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit or (ii) such LC Issuer’s willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, an LC Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.17 General Limitation of Liability. No claim may be made by any Credit Party, any Lender, the Administrative Agent, any LC Issuer or any other Person against the Administrative Agent, any LC Issuer, or any other Lender or the Affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative Agent and each LC Issuer hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim upon any such claim for any special, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in their favor.

Section 11.18 No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such Person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Loan Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to the Borrower, to any of its Subsidiaries, or to any other Person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrower agrees, on behalf of itself and its Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.

Section 11.19 Lenders and Agent Not Fiduciary to Borrower, etc. The relationship among the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent, each LC Issuer and the Lenders, on the other hand, is solely that of debtor and creditor, and the Administrative Agent, each LC Issuer and the Lenders have no fiduciary or other special relationship with the Borrower and its Subsidiaries, and no term or provision of any Loan Document, no course of dealing, no written or oral communication, or other action, shall be construed so as to deem such relationship to be other than that of debtor and creditor.

Section 11.20 Survival of Representations and Warranties. All representations and warranties herein shall survive the making of Loans and all LC Issuances hereunder, the execution and delivery of this Agreement, the Notes and the other documents the forms of which are attached as Exhibits hereto, the issue and delivery of the Notes, any disposition thereof by any holder thereof, and any investigation made by the Administrative Agent or any Lender or any other holder of any of the Notes or on its behalf. All statements contained in any certificate or other document delivered to the Administrative Agent or any Lender or any holder of any Notes by or on behalf of the Borrower or any of its Subsidiaries pursuant hereto or otherwise specifically for use in connection with the transactions contemplated hereby shall constitute representations and warranties by the Borrower hereunder, made as of the respective dates specified therein or, if no date is specified, as of the respective dates furnished to the Administrative Agent or any Lender.

Section 11.21 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 11.22 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action, event, condition or circumstance is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations or restrictions of, another covenant, shall not avoid the occurrence of a Default or an Event of Default if such action is taken or event, condition or circumstance exists.

Section 11.23 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Base Rate to the date of repayment, shall have been received by such Lender.

Section 11.24 USA Patriot Act. Each Lender subject to the USA Patriot Act hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA Patriot Act.

Section 11.25 Advertising and Publicity. No Credit Party shall issue or disseminate to the public (by advertisement, including without limitation any “tombstone” advertisement, press release or otherwise), submit for publication or otherwise cause or seek to publish any information describing the credit or other financial accommodations made available by the Lenders pursuant to this Agreement and the other Loan Documents without the prior written consent of the Administrative Agent. Nothing in the foregoing shall be construed to prohibit any Credit Party from making any submission or filing which it is required to make by applicable law or pursuant to judicial process; *provided*, that, (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Borrower shall promptly notify the Administrative Agent of the requirement to make such submission or filing and provide the Administrative Agent with a copy thereof.

Section 11.26 Release of Guarantees and Liens. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction permitted by any Loan Document or that has been consented to in accordance with the terms hereof or (ii) under the circumstances described in the next succeeding sentence. When this Agreement has been terminated and all of the Obligations have been fully and finally discharged (other than obligations in respect of Designated Hedge Agreements, contingent indemnity obligations and obligations in respect of Letters of Credit that have been Cash Collateralized) and the obligations of the Administrative Agent and the Lenders to provide additional credit under the Loan Documents have been terminated irrevocably, and the Credit Parties have delivered to the Administrative Agent a written release of all claims against the Administrative Agent and the Lenders, in form and substance satisfactory to the Administrative Agent, the Administrative Agent will, at the Borrower’s sole expense, execute and deliver any termination statements, lien releases, mortgage releases, re-assignments of intellectual property, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are necessary or advisable to release, as of record, the Administrative Agent’s Liens and all notices of security interests and liens previously filed by the Administrative Agent with respect to the Obligations.

Section 11.27 Payments Set Aside. To the extent that any Secured Creditor receives a payment from or on behalf of the Borrower or any other Credit Party, from the proceeds of any Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 11.28 Hedging Liability. Notwithstanding any provision hereof or in any other Loan Document to the contrary, in the event that any Credit Party is not an “eligible contract participant” as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, at the time (i) any transaction is entered into under any Hedging Obligation or (ii) such Person becomes a Borrower or Guarantor hereunder, and the effect of the foregoing would be to render any Guaranty Obligations of such Person violative of the Commodity Exchange Act, the Obligations of such Person shall not include (x) in the case of clause (i) above, such transaction and (y) in the case of clause (ii) above, any transactions outstanding under any Hedging Obligations as of the date such Person becomes a Borrower or Guarantor hereunder.

Section 11.29 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 an Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an 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 any Resolution Authority.

Section 11.30 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.

- (b) As used in this Section 11.30, 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:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

LEMAITRE VASCULAR, INC., as the Borrower

By: /s/ Joseph P. Pellegrino, Jr.  
Name: Joseph P. Pellegrino, Jr.  
Title: Chief Financial Officer

KEYBANK NATIONAL ASSOCIATION, as a  
Lender, LC Issuer, Swing Line Lender, and as the  
Administrative Agent

By: /s/ Thomas A. Crandell  
Name: Thomas A. Crandell  
Title: Senior Vice President

TRUIST BANK, as a Lender

By: /s/ Nick Hahn  
Name: Nick Hahn  
Title: Managing Director

The schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. Copies of these schedules will be provided to the Securities and Exchange Commission upon request. A list of those schedules appears below:

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| Schedule 4      | Permitted Earnouts          |
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| Schedule 7.02   | Dispositions                |
| Schedule 7.03   | Liens                       |
| Schedule 7.04   | Indebtedness                |
| Schedule 7.05   | Investments                 |

**PLEDGE AND SECURITY AGREEMENT**

dated as of  
June 22, 2020

Among

**LEMAITRE VASCULAR, INC.,**  
*as a Grantor,*

*and*

**KEYBANK NATIONAL ASSOCIATION,**  
*as the Administrative Agent,*

*for the benefit of*

**THE SECURED CREDITORS**

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Schedule 1 Pledged Collateral

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| Exhibit C-2 | Form of Collateral Assignment of Patents    |
| Exhibit C-3 | Form of Collateral Assignment of Trademarks |

THIS PLEDGE AND SECURITY AGREEMENT, dated as of June 22, 2020 (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is among LeMaitre Vascular, Inc., a Delaware corporation (the “Borrower”; together with each Additional Grantor (as defined below) that becomes a party hereto pursuant to Section 9.14, collectively, the “Grantors” and, individually, each a “Grantor”), and KeyBank National Association, as administrative agent (the “Administrative Agent”), for the benefit of the Secured Creditors (as defined below):

RECITALS:

(1) Except as otherwise defined herein, terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined. Certain terms used herein are defined in Section 1.01 hereof.

(2) This Agreement is made pursuant to the Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, the financial institutions named as lenders therein (together with their successors and assigns, each a “Lender,” and collectively, the “Lenders”), and the Administrative Agent.

(3) It is a condition precedent to the making of Loans and LC Issuances under the Credit Agreement that each Grantor shall have executed and delivered to the Administrative Agent this Agreement.

(4) Each Subsidiary Grantor (as defined below) is a direct or indirect Subsidiary of Borrower.

(5) Each Grantor will obtain benefits from the Credit Agreement and, accordingly, desires to execute this Agreement in order to satisfy the condition described above and to induce the Secured Creditors to extend credit pursuant to the Credit Agreement, the other Loan Documents and the Designated Hedge Documents.

NOW, THEREFORE, in consideration of the benefits accruing to each Grantor, the receipt and sufficiency of which are hereby acknowledged, each Grantor hereby makes the following representations and warranties to the Administrative Agent and to the other Secured Creditors and hereby covenants and agrees with the Administrative Agent and to the other Secured Creditors as follows:

ARTICLE I.

DEFINITIONS AND TERMS

Section 1.01 Defined Terms. Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to such terms in the Credit Agreement. Unless otherwise defined herein, all terms used herein and defined in the UCC shall have the same definitions herein as specified therein; *provided, however*, that if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term shall have the meaning specified in Article 9 of the UCC.

Section 1.02 Additional Defined Terms. The following terms shall have the meanings herein specified unless the context otherwise requires:

“Accounts Receivable” means (i) all accounts, now existing or hereafter arising; and (ii) without limitation of the foregoing, in any event including, but not limited to, (A) all rights to payment, whether or not earned by performance, for goods or other property (other than money) that has been or is to be sold, consigned, leased, licensed, assigned or otherwise disposed of, for services rendered or to be rendered, for a policy of insurance issued or to be issued, for a suretyship obligation incurred or to be incurred, for energy provided or to be provided, or for the use or hire of a vessel under a charter or other contract whether due or to become due, whether or not it has been earned by performance, and whether now existing or hereafter acquired or arising in the future, including Accounts Receivable from employees and Affiliates of any Grantor, (B) all rights evidenced by an account, invoice, purchase order, requisition, bill of exchange, note, contract, security agreement, lease, chattel paper, or any evidence of indebtedness or security related to the foregoing, (C) all security pledged, assigned, hypothecated or granted to or held by a Grantor to secure the foregoing, including all supporting obligations, (D) all guarantees, letters of credit, banker’s acceptances, drafts, endorsements, credit insurance and indemnifications on, for or of, any of the foregoing, including all rights to make drawings, claims or demands for payment thereunder, and (E) all powers of attorney for the execution of any evidence of indebtedness, guaranty, letter of credit or security or other writing in connection therewith.

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“Additional Grantor” has the meaning provided in Section 9.14.

“Administrative Agent” has the meaning provided in the first paragraph of this Agreement.

“Agreement” has the meaning provided in the first paragraph of this Agreement.

“Borrower” has the meaning provided in the first paragraph of this Agreement.

“Collateral” has the meaning provided in Section 2.01 hereof.

“Collateral Account” means any Controlled Deposit Account or Controlled Securities Account.

“Collateral Assignment Agreement” means a Collateral Assignment of Patents, a Collateral Assignment of Trademarks or a Collateral Assignment of Copyrights.

“Collateral Assignment of Copyrights” means a Collateral Assignment of Copyrights in the form of Exhibit C-1 hereto, or otherwise in form and substance acceptable to the Administrative Agent.

“Collateral Assignment of Patents” means a Collateral Assignment of Patents in the form of Exhibit C-2 hereto, or otherwise in form and substance acceptable to the Administrative Agent.

“Collateral Assignment of Trademarks” means a Collateral Assignment of Trademarks in the form of Exhibit C-3 hereto, or otherwise in form and substance acceptable to the Administrative Agent.

“Contract” means any contract, agreement or other writing between a Grantor and one or more additional parties.

“Contract Rights” means all rights of a Grantor under or in respect of a Contract, including, without limitation, all rights to payment, damages, liquidated damages, and enforcement.

“Control” means (i) when used with respect to any security or security entitlement, the meaning specified in Section 8-106 of the UCC; and (ii) when used with respect to any deposit account, the meaning specified in Section 9-104 of the UCC.

“Control Agreement” means any Deposit Account Control Agreement or Securities Account Control Agreement or any other control agreement delivered in connection with this Agreement.

**Controlled Deposit Account** means a deposit account (i) that is subject to a Deposit Account Control Agreement or (ii) as to which the Administrative Agent is the Depository Bank's "customer" (as defined in Section 4-104 of the UCC).

**Controlled Securities Account** means a securities account that (i) is maintained in the name of a Grantor at an office of a Securities Intermediary located in the United States of America and (ii) together with all financial assets credited thereto and all related security entitlements, is subject to a Securities Account Control Agreement.

**Copyrights** means any copyright to which a Grantor now or hereafter has title, as well as any application for a copyright hereafter made by such Grantor, and including any and all agreements, licenses and covenants providing for the granting of any right in or to Copyrights or otherwise providing for a covenant not to sue (whether the applicable Grantor is licensee or licensor thereunder) regarding a copyright.

**Credit Agreement** has the meaning provided in the Recitals of this Agreement.

**Deposit Account Control Agreement** means, with respect to a deposit account of a Grantor, a Deposit Account Control Agreement in form and substance satisfactory to the Administrative Agent, among such Grantor, the Administrative Agent and the relevant Depository Bank.

**Depository Bank** means a bank at which a deposit account of any Grantor is maintained.

**Designated Hedge Document** means (i) each Designated Hedge Agreement to which the Borrower or any other Grantor is now or may hereafter become a party, and (ii) each confirmation, transaction statement or other document executed and delivered in connection therewith to which the Borrower or any other Grantor is now or may hereafter become a party.

**Designated Hedge Document Obligations** means all obligations and liabilities owing by the Borrower or any other Grantor under all existing and future Designated Hedge Documents, in all cases whether now existing, or hereafter incurred or arising, including any such amounts incurred or arising during the pendency of any bankruptcy, insolvency, reorganization, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code. Notwithstanding the foregoing, Designated Hedge Document Obligations shall not include any Excluded Swap Obligations.

**Equity Interests** means (i) all of the issued and outstanding shares of all classes of capital stock of any corporation at any time directly owned by any Grantor and the certificates representing such capital stock, (ii) all of the membership interests in a limited liability company at any time owned or held by any Grantor, and (iii) all of the equity interests in any other form of organization at any time owned or held by any Grantor.

**Event of Default** means any Event of Default under, and as defined in, the Credit Agreement.

**Excluded Deposit Account** has the meaning given to such term in Section 5.01(a) hereof.

**Excluded Property** has the meaning given to such term in Section 2.02 hereof.

**Governing Documents** means all agreements and instruments evidencing or relating to investments in or ownership, voting or disposition of, any of the Pledged Collateral.

“Grantor” and “Grantors” have the meaning provided in the first paragraph of this Agreement.

“Intellectual Property” means (i) all Trademarks, together with the registrations and right to all renewals thereof, and the goodwill of the business of any Grantor symbolized by the Trademarks; (ii) all Patents; (iii) all Copyrights; (iv) all computer programs and software applications and source codes of such Grantor and all intellectual property rights therein and all other Proprietary Information of such Grantor, including, but not limited to, Trade Secrets; and (v) all Permits.

“Intercompany and Third-Party Notes” means all promissory notes, instruments, debentures, bonds, evidences of indebtedness and similar securities from time to time issued to, or held by, any Grantor.

“Inventory” means (i) all inventory; and (ii) without limitation of the foregoing, and in all cases including, but not limited to, all merchandise and other goods held for sale or lease, or furnished or to be furnished under contracts for service, including, without limitation, raw materials, works in process, finished goods, products made or processed, intermediates, packing materials, shipping materials, labels, semi-finished inventory, scrap inventory, spare parts inventory, manufacturing supplies, consumable supplies, other substances commingled therewith or added thereto, and all such goods that have been returned, reclaimed, repossessed or exchanged.

“Issuer” means the issuer of any Pledged Collateral.

“Lender” and “Lenders” each has the meaning provided in the Recitals of this Agreement.

“Notice of Exclusive Control” means a “Notice of Exclusive Control” as defined in each of the Control Agreements.

“Patents” means any patent to which a Grantor now or hereafter has title, as well as any application for a patent now or hereafter made by a Grantor, and including any and all agreements, licenses and covenants providing for the granting of any right in or to Patents or otherwise providing for a covenant not to sue (whether the applicable Grantor is licensee or licensor thereunder) regarding a Patent.

“Perfection Certificate” means a certificate substantially in the form of the Perfection Certificate delivered on the Closing Date, completed and supplemented with the schedules contemplated thereby to the reasonable satisfaction of the Administrative Agent, and signed by an Authorized Officer of the applicable Grantor delivering the same.

“Permits” means all licenses, permits, rights, orders, variances, franchises or authorizations of or from any Governmental Authority.

“Pledged Collateral” means the Pledged Equity Interests and the Pledged Debt.

“Pledged Debt” means all of the Intercompany and Third-Party Notes presently owned or hereafter acquired from time to time by any Grantor, and all interest, cash, instruments and other property hereafter from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing.

“Pledged Entity” means the Issuer of any Pledged Equity Interests.

“Pledged Equity Interests” means all of the Equity Interests now owned or hereafter acquired by each Grantor, and all of such Grantor’s other rights, title and interests in, or in any way related to, each Pledged Entity to which any of such Equity Interests relate, including, without limitation: (i) all additional Equity Interests hereafter from time to time acquired by such Grantor in any manner, together with all dividends, cash, instruments and other property hereafter from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests and in all profits, losses and other distributions to which such Grantor shall at any time be entitled in respect of any such Equity Interest; (ii) all other payments due or to become due to such Grantor in respect of any such Equity Interest, whether under any partnership agreement, limited liability company agreement, other agreement or otherwise, whether as contractual obligations, damages, insurance proceeds or otherwise; (iii) all of such Grantor’s claims, rights, powers, privileges, authority, puts, calls, options, security interests, liens and remedies, if any, under any partnership agreement, limited liability company agreement, other agreement or at law or otherwise in respect of any such Equity Interest; (iv) all present and future claims, if any, of such Grantor against any such Pledged Entity for moneys loaned or advanced, for services rendered or otherwise; (v) all of such Grantor’s rights under any partnership agreement, limited liability company agreement, other agreement or at law to exercise and enforce every right, power, remedy, authority, option and privilege of such Grantor relating to any such Equity Interest; (vi) all other property hereafter delivered in substitution for or in addition to any of the foregoing; (vii) all certificates and instruments representing or evidencing any of the foregoing; and (viii) all cash, securities, interest, distributions, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof.

**"Proceeds"** means (i) all proceeds; and (ii) without limitation of the foregoing and in all cases, including, but not limited to, (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of any Collateral, (B) whatever is collected on, or distributed on account of, any Collateral, (C) rights arising out of any Collateral, (D) claims arising out of the loss or nonconformity of, defects in, or damage to any Collateral, (E) claims and rights to any proceeds of any insurance, indemnity, warranty or guaranty payable to a Grantor (or the Administrative Agent, as assignee, loss payee or an additional insured) with respect to any of the Collateral, (F) claims and rights to payments (in any form whatsoever) made or due and payable to a Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of Governmental Authority), (G) all cash, money, checks and negotiable instruments received or held on behalf of the Administrative Agent pursuant to any lockbox or similar arrangement relating to the payment of Accounts Receivable or other Collateral, and (H) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**"Proprietary Information"** means all information and know-how worldwide, including, without limitation, technical data; manufacturing data; research and development data; data relating to compositions, processes and formulations, manufacturing and production know-how and experience; management know-how; training programs; manufacturing, engineering and other drawings; specifications; performance criteria; operating instructions; maintenance manuals; technology; technical information; software; computer programs; engineering and computer data and databases; design and engineering specifications; catalogs; promotional literature; financial, business and marketing plans; and inventions and invention disclosures.

**"Secured Creditors"** means, collectively, the Administrative Agent, the Lenders, the Swing Line Lender, each LC Issuer, each Designated Hedge Creditor and the respective successors and assigns of each of the foregoing.

**"Secured Obligations"** means, collectively, all Obligations, and any and all sums advanced by the Administrative Agent in order to preserve any of the Collateral or to preserve or protect its security interest in such Collateral, including, without limitation, sums advanced to pay or discharge insurance premiums, taxes, Liens and claims; and in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities referred to herein, the expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on any of the Collateral, or of any exercise by the Administrative Agent of its rights hereunder in respect of any Grantor or any of the Collateral, together with attorneys' fees and court costs. Notwithstanding the foregoing, Secured Obligations shall not include any Excluded Swap Obligations.

**“Securities Account Control Agreement”** means, with respect to a securities account of a Grantor, a Securities Account Control Agreement in form and substance satisfactory to the Administrative Agent, among the relevant Securities Intermediary, such Grantor and the Administrative Agent.

**“Securities Act”** has the meaning provided in Section 6.10 hereof.

**“Securities Intermediary”** means a clearing corporation or a Person, including, without limitation, a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

**“Security Agreement Joinder”** means a Security Agreement Joinder, substantially in the form of Exhibit A hereto, or otherwise in form and substance acceptable to the Administrative Agent.

**“Significant Intellectual Property”** has the meaning provided in Section 7.04 of this Agreement.

**“Subsidiary Grantor”** means each Grantor other than the Borrower.

**“Trademarks”** means any trademarks and service marks now held or hereafter acquired by a Grantor, any unregistered marks used by a Grantor and trade dress including logos and/or designs in connection with which any of these registered or unregistered marks are used, and including any and all agreements, licenses and covenants providing for the granting of any right in or to Trademarks or otherwise providing for a covenant not to sue or permitting coexistence (whether the applicable Grantor is licensee or licensor thereunder) regarding a Trademark.

**“Trade Secrets”** means any secretly held existing engineering and other data, information, production procedures and other know-how relating to the design, manufacture, assembly, installation, use, operation, marketing, sale and servicing of any products or business of a Grantor worldwide whether written or not written.

**“UCC”** means, unless the context indicates otherwise, the Uniform Commercial Code, as at any time adopted and in effect in the State of New York from time to time, specifically including and taking into account all amendments, supplements, revisions and other modifications thereto.

Section 1.03 **Terms Generally.** 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, (a) 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 from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) 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, and (d) unless otherwise specified, all references herein to Sections, Schedules, Annexes and Exhibits shall be construed to refer to Sections of, and Schedules, Annexes and Exhibits to, this Agreement.

## ARTICLE II.

### SECURITY INTEREST

Section 2.01 **Grant of Security Interest.** As security for the prompt and complete payment and performance when due of all of the Secured Obligations, each Grantor does hereby pledge, sell, assign and transfer unto the Administrative Agent, and does hereby grant to the Administrative Agent, for the benefit of the Secured Creditors, a continuing security interest in all of the right, title and interest of such Grantor in, to and under all of the following of each Grantor, whether now existing or hereafter from time to time arising or acquired and wherever located (collectively, the "Collateral"):

- (i) all accounts, including, without limitation, each and every Account Receivable;
- (ii) all goods;
- (iii) all Inventory;
- (iv) all machinery and equipment;
- (v) all documents;
- (vi) all instruments;
- (vii) all chattel paper;
- (viii) all money;
- (ix) all cash or cash equivalents;
- (x) all deposit accounts, including, but not limited to, all Controlled Deposit Accounts, together with all monies, securities and instruments at any time deposited in any such deposit account or otherwise held for the credit thereof;
- (xi) all securities accounts, together with all financial assets credited therein from time to time, and all financial assets, monies, securities, cash and other property held therein or credited thereto;
- (xii) all investment property;
- (xiii) all fixtures;
- (xiv) all as-extracted collateral, including, without limitation, all minerals;
- (xv) all general intangibles, including, but not limited to, all Contract Rights;
- (xvi) all commercial tort claims;
- (xvii) all Intellectual Property;

- (xviii) all insurance;
- (xix) all letters of credit and letter-of-credit rights;
- (xx) all payment intangibles;
- (xxi) all promissory notes;
- (xxii) all supporting obligations;
- (xxiii) all Permits;
- (xxiv) all Pledged Collateral;

(xxv) all other items, kinds and types of personal property, tangible or intangible, of whatever nature, and regardless of whether the creation or perfection or effect of perfection or non-perfection of a security interest therein is governed by the UCC of any particular jurisdiction or by any other applicable treaty, convention, statute, law or regulation of any applicable jurisdiction;

(xxvi) all additions, modifications, alterations, improvements, upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing; and

- (xxvii) all Proceeds and products of any and all of the foregoing.

Section 2.02 Excluded Property. Notwithstanding anything in Section 2.01 hereof to the contrary, the term Collateral shall not include (hereinafter, collectively, the “Excluded Property”): (a) any Leasehold and any fee-owned real property with a fair market value of less than \$5,000,000 in the aggregate; (b) any Equity Interest in a CFC or CFC Holdco to the extent the same represents, for all Grantors in the aggregate, more than 65% of the total combined voting power of all classes of capital stock or similar equity interests of such CFC or CFC Holdco which are entitled to vote; (c) governmental licenses, state or local franchises, charters and authorizations and any other property and assets to the extent prohibited or restricted thereby, or such security interest is restricted by, applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization (solely to the extent such consent has not been obtained after the use of commercially reasonable efforts), other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition (but excluding proceeds of any such governmental license), or otherwise require consent thereunder (after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law); (d) leases, licenses, permits or agreements with respect to any Purchase Money Indebtedness (or similar arrangement) to the extent that, and so long as, a grant of a security interest therein, or in the property or assets that secure the underlying obligations with respect thereto (i) is prohibited by applicable Law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition or (ii) would violate or invalidate such lease, license, permit or agreement, or create a right of termination in favor of, or require the consent of, any other party thereto (other than the Borrower or a Subsidiary) (in each case, after giving effect to the relevant provisions of the UCC or other applicable Laws), in each case, other than the proceeds thereof, and only to the extent that and for so long as such limitation on such pledge or security interest is otherwise permitted hereunder; (e) Margin Stock; (f) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; (g) motor vehicles and other assets subject to certificates of title; and (h) particular assets if, and for so long as, in each case, reasonably agreed by the Administrative Agent, the cost of creating or perfecting such pledges or security interests in such assets exceed the practical benefits to be obtained by the Secured Creditors therefrom.

Section 2.03 No Assumption of Liability. The security interest hereunder of any Grantor is granted as security only and shall not subject the Administrative Agent or any other Secured Creditor to, or in any way alter or modify, any obligation or liability of such Grantor with respect to or arising out of any of the Collateral.

Section 2.04 Power of Attorney. Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent its true and lawful agent and attorney-in-fact, and in such capacity the Administrative Agent shall have, without any further action required by or on behalf of any Grantor, the right, with full power of substitution, in the name of such Grantor or otherwise, for the use and benefit of the Administrative Agent and the other Secured Creditors: (a) to receive, endorse, present, assign, deliver and/or otherwise deal with any and all notes, acceptances, letters of credit, checks, drafts, money orders, or other evidences of payment relating to the Collateral of such Grantor or any part thereof; (b) to demand, collect, receive payment of, and give receipt for and give credits, allowances, discounts, discharges, releases and acquittances of and for any or all of the Collateral of such Grantor; (c) to sign the name of such Grantor on any invoice or bill of lading relating to any of the Collateral of such Grantor; (d) to send verifications of any or all of the Accounts Receivable of such Grantor to its account debtors; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in or before any court or other tribunal (including any arbitration proceedings) to collect or otherwise realize on all or any of the Collateral of such Grantor, or to enforce any rights of such Grantor in respect of any of its Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to any or all of the Collateral of such Grantor; (g) to notify, or require such Grantor to notify or cause to be notified, its account debtors to make payment directly to the Administrative Agent or to a Controlled Deposit Account; or (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with any or all of the Collateral of such Grantor, and to do all other acts and things necessary or appropriate to carry out the intent and purposes of this Agreement, as fully and completely as though the Administrative Agent were the absolute owner of the Collateral of such Grantor for all purposes; *provided, however,* that except upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall not exercise the powers granted hereby.

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Administrative Agent and the other Secured Creditors, which representations and warranties shall survive the execution and delivery of this Agreement until the termination of this Agreement in accordance with Section 9.09, as follows:

Section 3.01 Title and Authority. Such Grantor has (i) good, valid and unassailable title to all tangible items owned by it and constituting any portion of the Collateral with respect to which it has purported to grant the security interest, and good, valid and unassailable rights in all other Collateral with respect to which it has purported to grant the security interest, and (ii) full power and authority to grant to the Administrative Agent the security interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

Section 3.02 Absence of Other Liens.

(a) There is no financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind of such Grantor in the Collateral, except for any filings or recordings made in connection with any Permitted Liens.

(b) Such Grantor is, and as to any Collateral acquired by it from time to time after the date hereof such Grantor will be, the owner of all of its Collateral free and clear of any Lien, and the security interest of such Grantor in its Collateral is and will be superior and prior to any other security interest or other Lien, except for Permitted Liens.

Section 3.03 Validity of Security Interest. The security interest of such Grantor constitutes a legal, valid and enforceable first priority (except as to any Permitted Liens) security interest in all of the Collateral of such Grantor, securing the payment and performance of the Secured Obligations.

Section 3.04 Perfection of Security Interest under UCC.

(a) Subject to Section 6.16 of the Credit Agreement, all notifications and other actions, including, without limitation, (i) all deposits of certificates and instruments evidencing any Collateral (duly endorsed or accompanied by appropriate instruments of transfer), (ii) all notices to and acknowledgments of any bailee or other Person, (iii) all acknowledgments and agreements respecting the right of the Administrative Agent to obtain control with respect to any Collateral, and (iv) all filings, registrations and recordings, which are (x) required by the terms of this Agreement to have been given, made, obtained, done and accomplished by a Grantor, and (y) necessary to create, preserve, protect and perfect the security interest granted by such Grantor to the Administrative Agent hereby in respect of its portion of the Collateral, have been given, made, obtained, done and accomplished.

(b) Notwithstanding anything else set forth in the Loan Documents to the contrary, in no event shall any Grantor be required to take perfection actions with respect to any Collateral located in foreign jurisdictions or otherwise be required to enter into or obtain agreements governed by foreign law.

(c) After giving effect to all such actions, the security interest granted by such Grantor to the Administrative Agent pursuant to this Agreement in and to its portion of the Collateral will be perfected to the maximum extent a security interest in such Grantor's portion of the Collateral can be perfected under the UCC of any applicable jurisdiction.

Section 3.05 Perfection Certificates. Each Perfection Certificate delivered by any Grantor (whether delivered pursuant to Section 4.07(a) of this Agreement or pursuant to the Credit Agreement), and all information set forth therein, is true and correct in all respects, except to the extent that such Perfection Certificate has been supplemented or replaced in each case in accordance with this Agreement or the other Loan Documents.

Section 3.06 Places of Business; Jurisdiction of Organization; Locations of Collateral. Each Grantor represents and warrants that (a) the principal place of business of such Grantor, or its chief executive office, if it has more than one place of business, is located at the address indicated on the most recent Perfection Certificate executed and delivered by such Grantor to the Administrative Agent; (b) the jurisdiction of formation or organization of such Grantor is set forth on the most recent Perfection Certificate executed and delivered by such Grantor to the Administrative Agent; (c) the U.S. Federal Tax I.D. Number and, if applicable, the organizational identification number of such other Grantors, is set forth on the most recent Perfection Certificate executed and delivered by such Grantor to the Administrative Agent; and (d) all Inventory and equipment of such Grantor is located at one of the locations set forth on the most recent Perfection Certificate executed and delivered by such Grantor to the Administrative Agent. Such Grantor does not, at and as of the date hereof, conduct business in any jurisdiction, and except as set forth in the most recent Perfection Certificate delivered to the Administrative Agent, in the preceding five years, such Grantor and any predecessors in interest have not conducted business in any jurisdiction, under any trade name, fictitious name or other name (including, without limitation, any names of divisions or predecessor entities), except the current legal name of such Grantor and such other trade, fictitious and other names as are listed on the most recent Perfection Certificate executed and delivered by such Grantor to the Administrative Agent.

Section 3.07 Pledged Collateral. Schedule 1 hereto sets forth a true and complete list of all of the Pledged Collateral owned by each Grantor as of the Closing Date.

Section 3.08 Deposit Accounts. The most recent Perfection Certificate delivered by each Grantor to the Administrative Agent sets forth a true and complete list of all deposit accounts owned by each Grantor or in which any such Grantor's Collateral is held. To the extent required pursuant to Section 5.01 of this Agreement, all of the deposit accounts of each Grantor are, and all cash and money of each Grantor is held in, Controlled Deposit Accounts.

Section 3.09 Securities Accounts. The most recent Perfection Certificate delivered by each Grantor to the Administrative Agent sets forth a true and complete list of all securities accounts owned by each Grantor or in which any such Grantor's Collateral is held. Unless otherwise permitted pursuant to Section 5.02 of this Agreement, no Grantor has any securities accounts or otherwise owns or is entitled to any financial assets or securities entitlements other than Controlled Securities Accounts and financial assets or securities entitlements that are subject to a Controlled Securities Account.

Section 3.10 Status of Pledged Collateral. All of the Pledged Equity Interests of each Grantor hereunder have been duly and validly issued and are fully paid and non-assessable. All of the Pledged Debt of each Grantor is the legal, valid and binding obligation of the Issuer thereof, enforceable in accordance with its terms. Except as permitted pursuant to the Credit Agreement, no Grantor has any obligation to make any further or additional loans or advances to, or purchases of securities from, any Issuer with respect to any of the Pledged Debt. No Grantor is in default in the payment of any portion of any mandatory capital contribution, cash call, or other funding, if any, required to be made under any Governing Document relating to any of the Pledged Equity Interests of such Grantor. No Grantor is in violation or default of any other material provisions of any such Governing Document. No Pledged Collateral of any Grantor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Grantor by any Person.

#### ARTICLE IV.

#### GENERAL COVENANTS

Section 4.01 No Other Liens; Defense of Title. No Grantor will make or grant, or suffer or permit to exist, any Lien on any of its Collateral, other than Permitted Liens. Each Grantor, at its sole cost and expense, will take any and all actions reasonably necessary and appropriate to defend title to its Collateral against any and all Persons and to defend the validity, enforceability, perfection, effectiveness and priority of the security interest of the Administrative Agent therein against any Lien other than Permitted Liens.

**Section 4.02 Further Assurances; Filings and Recordings.**

(a) Each Grantor, at its sole cost and expense, will duly execute, acknowledge and deliver all such agreements, instruments and other documents and take all such actions (including, without limitation, (i) physically pledging instruments, documents, promissory notes, chattel paper and certificates evidencing any investment property or any of the Pledged Collateral with the Administrative Agent, (ii) obtaining Securities Account Control Agreements and Deposit Account Control Agreements in accordance with this Agreement, (iii) obtaining from other Persons lien waivers and bailee letters, (iv) obtaining from other Persons agreements evidencing the exclusive control and dominion of the Administrative Agent over any of the Collateral, in instances where obtaining control over such Collateral is the only or best method of perfection, and (v) making filings, recordings and registrations), as the Administrative Agent may reasonably from time to time instruct in writing to better assure, preserve, protect and perfect the security interest of the Administrative Agent in the Collateral of such Grantor, and the rights and remedies of the Administrative Agent hereunder, or otherwise to further effectuate the intent and purposes of this Agreement and to carry out the terms hereof.

(b) Each Grantor, at its sole cost and expense, will pay all taxes, fees and charges associated with and applicable to the filing, recording, registration and publishing of all UCC financing statements and other documents, agreements, and registrations by the Administrative Agent necessary to perfect the Liens granted to the Administrative Agent pursuant to this Agreement, and all taxes, fees, and charges of any re-filing, re-recording, re-registration and re-publishing of any such UCC financing statements, or other documents, agreements or registrations.

**Section 4.03 Use and Disposition of the Collateral.**

(a) Unless and until an Event of Default shall have occurred and be continuing and the Administrative Agent shall have notified the Grantors thereof in writing that the rights of any or all of the Grantors under this Section 4.03(a) are suspended during the continuance of such Event of Default, each Grantor may use and dispose of its Collateral in any lawful manner not inconsistent with the provisions of this Agreement, the Credit Agreement or any other Loan Document.

(b) No Grantor will consign any of its Inventory to any Person unless all filings of financing statements under the UCC and other actions and filings, registrations and recordings required under other applicable laws have been made in order to perfect the rights and interests of such Grantor in the consigned Inventory against creditors of and purchasers from the consignee and such financing statements have been assigned to the Administrative Agent for the benefit of the Secured Creditors.

(c) No Grantor will permit any of its Inventory or equipment having a value in excess of \$3,000,000 to be in the possession or control of any single warehouseman, bailee, processor, supplier or agent at any time, without first complying with the requirements of Section 6.10(e) of the Credit Agreement.

**Section 4.04 Delivery or Marking of Chattel Paper; Other Actions. Without limitation of any of the provisions of Section 4.02(a) or Section 4.13 hereof:**

(a) If any amount payable to a Grantor under or in connection with any of the Collateral shall be or become evidenced by any chattel paper, document, promissory note or instrument with a face value in excess of \$2500,00 individually, such Grantor will, unless otherwise agreed to in writing by the Administrative Agent, cause such chattel paper, document, promissory note or instrument to be delivered to the Administrative Agent and pledged as part of the Collateral hereunder, accompanied by any appropriate instruments or endorsements of transfer. In the case of any such chattel paper, the Administrative Agent may require, in lieu of the delivery thereof to the Administrative Agent, that the writings evidencing the chattel paper be legended to reflect the security interest of the Administrative Agent therein, all in a manner acceptable to the Administrative Agent.

(b) If at any time any Grantor shall take and perfect a security interest in any property of an account debtor, as security for the Accounts Receivable owed by such account debtor and/or any of its Affiliates, or take and perfect a security interest arising out of the consignment to any Person of any Inventory or other Collateral, such Grantor shall, if requested by the Administrative Agent (which request may be made by the Administrative Agent only upon the written instructions of the Required Lenders, issued by the Required Lenders, in their sole respective discretion), promptly execute and deliver to the Administrative Agent a separate assignment of all financing statements and other filings made to perfect the same. Such separate assignment need not be filed of public record unless necessary to continue the perfected status of the security interest of such Grantor against creditors of any transferees from the account debtor or consignee.

Section 4.05 Authorization to File Financing Statements. Each Grantor irrevocably authorizes the Administrative Agent, its agents or assigns at any time and from time to time to file in any jurisdiction any initial financing statements and all amendments thereto that (a) indicate the Collateral (i) as "all assets" or "all personal property" of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of the UCC, but specifically excluding the Excluded Property in any such description of the Collateral; or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required pursuant to the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to, (i) whether such Grantor is an organization, the type of organization and any organization identification number or control number, as applicable, and (ii) in the case of a financing statement that is filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates.

Section 4.06 Maintenance of Records. Each Grantor will keep and maintain at its own cost and expense satisfactory and complete records of its Accounts Receivable, Contracts and other Collateral, including, but not limited to, the originals of all documentation with respect thereto, records of all payments received, all credits granted thereon, all merchandise returned and all other dealings therewith. All billings and invoices issued by a Grantor with respect to its Accounts Receivable will be in compliance with, and conform to, the requirements of all applicable federal, state and local laws and any applicable laws of any relevant foreign jurisdiction. If an Event of Default shall have occurred and be continuing and the Administrative Agent so directs, each Grantor shall legend, in form and manner satisfactory to the Administrative Agent, its Accounts Receivable and Contracts, as well as books, records and documents of such Grantor evidencing or pertaining thereto with an appropriate reference to the fact that such Accounts Receivable and Contracts have been assigned to the Administrative Agent and that the Administrative Agent has a security interest therein.

Section 4.07 Perfection Certificates. Each Grantor shall provide to the Administrative Agent a completed Perfection Certificate, duly executed by an Authorized Officer of such Grantor, together with all schedules required to be delivered in connection therewith (i) on the Closing Date as required pursuant to the Credit Agreement, (ii) on each date required pursuant to Section 6.01(m) of the Credit Agreement, and (iii) on the date that any additional Grantor becomes a party to this Agreement pursuant to Section 9.14 hereof.

Section 4.08 Legal Status. Each Grantor agrees that (a) it will not change its name, place of business or if more than one, chief executive office, or its mailing address or organizational identification number if it has one, in each case without providing the Administrative Agent at least ten (10) days' prior written notice thereof (or such shorter period as agreed to by the Administrative Agent), (b) if such Grantor does not have an organizational identification number and later obtains one, it will promptly notify the Administrative Agent of such organizational identification number, and (c) it will not change its type of organization, jurisdiction of organization or other legal structure in each case unless (i) it shall have provided the Administrative Agent at least ten (10) days' prior written notice thereof (or such shorter period as agreed to by the Administrative Agent), and (ii) such action is permitted pursuant to the Credit Agreement.

Section 4.09 Inspections and Verification. The Administrative Agent and such Persons as the Administrative Agent may designate shall have the right, at any Grantor's own cost and expense, at any time or from time to time, on not less than two (2) Business Days' prior notice to the Borrower (on behalf of any applicable Grantor) if no Default or Event of Default has occurred and is continuing, and in the event a Default or Event of Default has occurred and is continuing, on not less than one (1) Business Day's prior notice to the Borrower (on behalf of any applicable Grantor), to inspect the Collateral of such Grantor, all books and records related thereto (and to make extracts and copies thereof) and the premises upon which any of such Collateral is located, to discuss such Grantor's affairs with the officers of such Grantor and its independent accountants, and to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, such Collateral, including, in the case of accounts or other Collateral in the possession of any third Person, by contacting the third Person possessing such Collateral (after not less than two (2) days' prior notice to the applicable Grantor) and while an Event of Default exists, Account Debtors, in each case for the purpose of making such verification; *provided*, that prior to the occurrence and continuation of an Event of Default, the Grantors shall not be liable for more than one visit and inspection in any fiscal year. Any procedures or actions taken, prior to the occurrence and continuance of an Event of Default, in order to verify accounts by contacting account debtors, shall be effected by the Borrower's independent accountants, acting at the direction of the Administrative Agent, in such manner (consistent with their normal auditing procedures) so as not to reveal the identity of the Administrative Agent or the existence of the security interest to the account debtors. The Borrower will instruct its independent accountants to undertake any such verification when and as requested by the Administrative Agent. The results of any such verification by independent accountants shall be reported by such independent accountants to both the Administrative Agent and the Borrower. The Administrative Agent shall have the absolute right to share any information it gains from any such inspection or verification or from collateral reports furnished to it by a Grantor with the other Secured Creditors.

Section 4.10 Insurance. Each Grantor will at all times keep its business and its Collateral insured to the extent and in accordance with Section 6.03 of the Credit Agreement.

Section 4.11 [Reserved].

Section 4.12 Commercial Tort Claims. If any Grantor shall at any time hold or acquire a commercial tort claim, the recovery from which could reasonably be expected to exceed \$1,000,000, such Grantor shall promptly notify the Administrative Agent thereof in a writing signed by such Grantor, which sets forth the details thereof and grants to the Administrative Agent (for the benefit of the Secured Creditors) a Lien thereon and on the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Administrative Agent.

Section 4.13 Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in any electronic chattel paper or any “transferable record,” as defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act, as in effect in any relevant jurisdiction in an amount in excess of \$1,000,000, such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control under the UCC or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with such Grantor that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent’s loss of control, for the Grantor to make alterations such the electronic chattel paper or transferable record permitted under the UCC or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such electronic chattel paper or transferable record.

Section 4.14 Letter-of-Credit Rights. If any Grantor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of such Grantor with a face or undrawn amount of \$250,000 or more, such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, such Grantor shall, pursuant to an agreement in form and substance satisfactory to the Administrative Agent, either (a) arrange for the issuer or any confirming bank of such letter of credit to consent to an assignment to the Administrative Agent of the proceeds of any drawing under the letter of credit, or (b) arrange for the Administrative Agent to become the transferee beneficiary of the letter of credit, with the Administrative Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be paid to the applicable Grantor unless an Event of Default has occurred and is continuing.

Section 4.15 Protective Advances by the Administrative Agent. At its option, but without being obligated to do so, the Administrative Agent may, upon not less than two (2) Business Days’ prior written notice to any applicable Grantor, after the occurrence and during the continuance of an Event of Default, (a) pay and discharge past due taxes, assessments and governmental charges, at any time levied on or with respect to any of the Collateral of such Grantor which such Grantor has failed to pay and discharge in accordance with the requirements of this Agreement or any of the other Loan Documents, (b) pay and discharge any claims of other creditors of such Grantor which are secured by any Lien on any Collateral, other than a Permitted Lien, (c) pay for the maintenance, repair, restoration and preservation of the Collateral to the extent such Grantor fails to comply with its obligations in regard thereto under this Agreement and the other Loan Documents or the Administrative Agent reasonably believes payment of the same is necessary or appropriate to avoid a material loss or material diminution in value of the Collateral, and/or (d) obtain and pay the premiums on insurance for the Collateral which such Grantor fails to maintain in accordance with the requirements of this Agreement and the other Loan Documents, and each Grantor agrees to reimburse the Administrative Agent, on demand, for all payments and expenses incurred by the Administrative Agent with respect to such Grantor or any of its Collateral pursuant to the foregoing authorization, *provided, however,* that nothing in this Section shall be construed as excusing any Grantor from the performance of, or imposing any obligation on the Administrative Agent or any other Secured Creditor to cure or perform, any covenants or other agreements of any Grantor with respect to any of the foregoing matters as set forth herein or in any of the other Loan Documents.

## ARTICLE V.

### ACCOUNTS AND COLLECTION OF ACCOUNTS

#### Section 5.01 Deposit Accounts.

(a) The Grantors shall take commercially reasonable efforts to cause all deposit accounts to be subject at all times to a fully effective Deposit Account Control Agreement except (i) any payroll account used exclusively for funding the payroll obligations of the Grantors in the ordinary course of business or (ii) any deposit account so long as the aggregate daily balance in any such deposit account is not in excess of \$100,000 and the aggregate daily balance of all deposit accounts that are not subject to Deposit Account Control Agreements is not in excess of \$500,000 (any deposit account that is not required to be subject to a Deposit Account Control Agreement pursuant to this Section shall be referred to as an "Excluded Deposit Account").

#### Section 5.02 Securities Accounts.

(a) The Grantors shall take commercially reasonable efforts to cause all securities accounts to be subject at all times to a fully effective Securities Account Control Agreement.

Section 5.03 Operation of Collateral Accounts. Upon the occurrence and during the continuance of an Event of Default, upon written notice to any Grantor, the Administrative Agent shall be permitted to (a) retain, or instruct the relevant Securities Intermediary or Depository Bank to retain, all cash and investments held in any Collateral Account, (b) liquidate or issue entitlement orders with respect to, or instruct the relevant Securities Intermediary or Depository Bank to liquidate, any or all investments or financial assets held in any Collateral Account, (c) issue a Notice of Exclusive Control or other similar instructions with respect to any Collateral Account and instruct the Depository Bank or Securities Intermediary to follow the instructions of the Administrative Agent, and (d) withdraw any amounts held in any Collateral Account and apply such amounts in accordance with the terms of this Agreement.

#### Section 5.04 Collection of Accounts.

(a) Each Grantor shall, in a manner consistent with the provisions of this Article V, endeavor to cause to be collected from the account debtor named in each of its Accounts Receivable, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures), any and all amounts owing under or on account of such Accounts Receivable and shall, if required to do so pursuant to the terms of this Agreement, cause such collections to be deposited or held in a Collateral Account.

(b) Each Grantor shall, and the Administrative Agent hereby authorizes each Grantor to, enforce and collect all amounts owing to it on its Inventory and Accounts Receivable, for the benefit and on behalf of the Administrative Agent and the other Secured Creditors; *provided, however,* that such privilege may at the sole option of the Administrative Agent, by notice to the Borrower (on behalf of all Grantors), be terminated upon the occurrence and during the continuance of any Event of Default.

## ARTICLE VI.

### PLEDGED COLLATERAL

#### Section 6.01 Delivery of Certificates and Instruments for Pledged Collateral.

(a) Subject to Section 6.16 of the Credit Agreement, on or prior to the Closing Date, each Grantor shall pledge and deposit with the Administrative Agent all certificates or instruments, if any, representing any of the Pledged Collateral at the time owned by such Grantor and subject to the security interest hereof, duly endorsed in blank in the case of any instrument, and accompanied by undated stock powers duly executed in blank by such Grantor or such other instruments of transfer as are acceptable to the Administrative Agent, in the case of Pledged Equity Interests.

(b) If a Grantor shall acquire (by purchase, conversion, exchange, stock dividend or otherwise) any additional Pledged Collateral, at any time or from time to time after the date hereof which is or are intended to be subjected to the security interest hereof and which is or are represented by certificates or instruments, such Grantor shall (i) cause all such issuers to opt into Article 8 of the UCC and cause each such uncertificated security to be certificated in all respects in accordance with applicable laws, (ii) forthwith pledge and deposit with the Administrative Agent all such certificates or instruments, duly endorsed in blank in the case of Intercompany and Third-Party Notes, and accompanied by undated stock powers duly executed in blank by such Grantor or such other instruments of transfer as are acceptable to the Administrative Agent, in the case of Equity Interests, and (iii) promptly thereafter deliver to the Administrative Agent a certificate executed by an authorized officer of such Grantor describing such additional Pledged Collateral and certifying that the same have been duly pledged with the Administrative Agent hereunder.

(c) Without limitation of any other provision of this Agreement, if any of the Pledged Collateral of a Grantor (whether now owned or hereafter acquired) which is intended to be subjected to the security interest hereof is (i) an uncertificated security, each such Grantor shall either (A) cause all such issuers to opt into Article 8 of the UCC and cause each such uncertificated security to be certificated in all respects in accordance with applicable laws, accompanied by undated stock powers duly executed in blank by each such Grantor or by such other instruments of transfer as are acceptable to the Administrative Agent, and promptly thereafter deposited with the Administrative Agent or otherwise provide the Administrative Agent control with respect to such uncertificated security, or (B) not opt into or voluntarily allow any Equity Interest to be governed by Article 8 of the UCC, or (ii) held in a securities account that is not already subject to a Securities Account Control Agreement, such Grantor shall promptly take all actions required to make such securities account subject to a Securities Account Control Agreement. Each Grantor further agrees to take such actions as the Administrative Agent deems reasonably necessary or desirable to effect the foregoing and to permit the Administrative Agent to exercise any of its rights and remedies hereunder in respect thereof, and agrees to provide an opinion of counsel reasonably satisfactory to the Administrative Agent with respect to any such pledge of any of the securities described in clauses (i) and (ii) above, promptly upon the request of the Administrative Agent.

Section 6.02 No Assumption of Liability. The security interest of any Grantor is granted as security only and shall not subject the Administrative Agent or any other Secured Creditor to, or in any way alter or modify, any obligation or liability of such Grantor with respect to or arising out of any of the Pledged Collateral. Nothing herein shall be construed to make the Administrative Agent liable as a general partner or limited partner of any Pledged Entity or a shareholder of any corporation, and the Administrative Agent by virtue of this Agreement or any actions taken as contemplated hereby (except as referred to in the following sentence) shall not have any of the duties, obligations or liabilities of a general partner or limited partner of any Pledged Entity or a stockholder of any corporation. The parties hereto expressly agree that, unless the Administrative Agent shall become the absolute owner of an Equity Interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Administrative Agent and/or a Grantor or any other Person.

Section 6.03 Registration of Collateral in the Name of the Administrative Agent. On and after the occurrence and continuation of an Event of Default, the Administrative Agent shall have the right, at any time in its discretion and shall endeavor to provide written notice to the applicable Grantor (it being understood that the Administrative Agent should not be liable for the failure to provide such notice), to transfer to or to register in the name of the Administrative Agent or any of its nominees any or all of the Pledged Collateral, subject only to the revocable voting and similar rights specified in this Article VI. In addition, on and after the occurrence and continuation of an Event of Default, the Administrative Agent shall have the right at any time to exchange certificates or instruments representing or evidencing any Pledged Collateral for certificates or instruments of smaller or larger denominations.

Section 6.04 Appointment of Sub-Agents; Endorsements; etc. The Administrative Agent shall have the right to appoint one or more sub-agents for the purpose of retaining physical possession of the instruments and certificates evidencing any of the Pledged Collateral, which may be held (in the sole discretion of the Administrative Agent) in the name of the relevant Grantor, endorsed or assigned in blank or in favor of the Administrative Agent or any nominee or nominees of the Administrative Agent or a sub-agent appointed by the Administrative Agent.

Section 6.05 Voting Rights. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall be entitled to exercise all voting rights attaching to any and all Pledged Collateral owned by it, and to give consents, waivers or ratifications in respect thereof, *provided* that no vote shall be cast or any consent, waiver or ratification given or any action taken which would violate, result in breach of any covenant contained in or be inconsistent with any of the terms of this Agreement, any other Loan Document or any Designated Hedge Document, or which would have the effect of materially impairing the position or interests of the Administrative Agent or any Secured Creditor therein. All such rights of such Grantor to vote and to give consents, waivers and ratifications shall cease in case an Event of Default shall occur and be continuing.

Section 6.06 Entitlement of Grantors to Cash Dividends and Distributions. Each Grantor shall be entitled to receive all cash dividends or distributions payable in respect of its Pledged Collateral, except as otherwise provided in this Article VI.

Section 6.07 Entitlement of Administrative Agent to Dividends and Distributions. The Administrative Agent shall be entitled to receive and to retain as part of the Pledged Collateral:

(a) all cash dividends and distributions payable in respect of the Pledged Collateral at any time when an Event of Default shall have occurred and be continuing; and

(b) regardless of whether or not an Event of Default shall have occurred and be continuing at the time of payment or distribution thereof, and, to the extent any of the following is prohibited by the Credit Agreement: (i) all cash dividends and distributions in respect of the Pledged Collateral which are reasonably determined by the Administrative Agent to represent in whole or in part an extraordinary, liquidating or other distribution in return of capital; (ii) all other or additional stock, other securities, partnership interests, membership interests or property (other than cash to which a Grantor is entitled under Section 6.06) paid or distributed by way of dividend (including, without limitation, any payment in kind dividend) or otherwise in respect of the Pledged Collateral; (iii) all other or additional stock, other securities, partnership interests, membership interests or property (including cash) paid or distributed in respect of the Pledged Collateral by way of stock split, spin-off, split up, reclassification, combination of shares or similar rearrangement; and (iv) all other or additional stock, other securities, partnership interests, membership interests or property (including cash) which may be paid in respect of the Pledged Collateral by reason of any consolidation, merger, exchange of stock, conveyance of assets, liquidation or similar corporate, partnership or limited liability company reorganization.

Section 6.08 Application of Dividends and Distributions. If no Event of Default shall have occurred and be continuing at such time, the Administrative Agent will, at the request of the Borrower (on behalf of any applicable Grantor or Grantors), pay over to the Administrative Agent, for application to the payment or prepayment of any of the Loan Document Obligations, any cash held by it as Pledged Collateral which is attributable to dividends or distributions received by it and then held as part of the Collateral pursuant to this Article VI. If an Event of Default shall have occurred and be continuing, all dividends and distributions received by the Administrative Agent and then held by it pursuant to this Article VI as part of the Pledged Collateral will be applied as provided in Section 8.05 hereof.

Section 6.09 Turnover by Grantors. All dividends, distributions or other payments that are received by any Grantor contrary to the provisions of this Agreement shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith paid over to the Administrative Agent as Collateral in the same form as so received (with any necessary endorsement).

Section 6.10 Registration under 1933 Act. If an Event of Default shall have occurred and be continuing and a Grantor shall have received from the Administrative Agent a written request or requests that such Grantor cause any registration, qualification or compliance under any Federal or state securities law or laws to be effected with respect to all or any part of the Pledged Equity Interest of its Subsidiaries, such Grantor as soon as practicable and at its expense will use its best efforts to cause such registration to be effected (and be kept effective) and will use its best efforts to cause such qualification and compliance to be effected (and be kept effective) as may be so requested and as would permit or facilitate the sale and distribution of such stock, including, without limitation, registration under the Securities Act of 1933, as then in effect (the "Securities Act") (or any similar statute then in effect), appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with any other governmental requirements, *provided* that the Administrative Agent shall furnish to such Grantor such information regarding the Administrative Agent as such Grantor may request in writing and as shall be required in connection with any such registration, qualification or compliance. The relevant Grantor will advise the Administrative Agent in writing as to the progress of each such registration, qualification or compliance and as to the completion thereof, will furnish to the Administrative Agent such number of prospectuses, offering circulars and other documents incident thereto as the Administrative Agent from time to time may reasonably request, and will indemnify the Administrative Agent and all others participating in the distribution of such Pledged Equity Interests against all claims, losses, damages or liabilities caused by any untrue statement (or alleged untrue statement) of a material fact contained therein (or in any related registration statement, notification or the like) or by any omission (or alleged omission) to state therein (or in any related registration statement, notification or the like) a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same may have been caused by an untrue statement or omission based upon information furnished in writing to such Grantor by the Administrative Agent expressly for use therein.

Section 6.11 Sale of Pledged Equity Interests in Connection with Enforcement. If at any time when the Administrative Agent shall determine to exercise its right to sell all or any part of the Pledged Equity Interests pursuant to Section 8.01, such Pledged Equity Interests or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act, as then in effect, the Administrative Agent may, in its sole and absolute discretion and to the fullest extent permitted by applicable law now or hereafter in effect, sell such Pledged Equity Interests or part thereof by private sale in such manner and under such circumstances as the Administrative Agent may deem necessary or advisable in order that such sale may legally be effected without such registration, *provided* that at least ten (10) days' notice of the time and place of any such sale shall be given to the relevant Grantor. Without limiting the generality of the foregoing, in any such event the Administrative Agent, in its sole and absolute discretion, (a) may proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Equity Interests or part thereof shall have been filed under such Securities Act, (b) may approach and negotiate with a single possible purchaser to effect such sale and (c) may restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment, and not with a view to the distribution or sale of such Pledged Equity Interests or part thereof. In the event of any such sale, the Administrative Agent shall incur no responsibility or liability to any Grantor for selling all or any part of the Pledged Equity Interests at a price which the Administrative Agent may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until the registration as aforesaid.

## ARTICLE VII.

### INTELLECTUAL PROPERTY

Section 7.01 Intellectual Property. Each Grantor represents and warrants that: (a) it is the true and lawful owner or licensee of the Trademarks listed on the most recent Perfection Certificate delivered by such Grantor to the Administrative Agent and that said listed Trademarks constitute all the marks registered in the United States Patent and Trademark Office that such Grantor now owns or uses in connection with its business; (b) it is the true and lawful owner or licensee of all rights in the Patents listed on the most recent Perfection Certificate delivered by such Grantor to the Administrative Agent and that said Patents constitute all the United States patents and applications for United States patents that such Grantor now owns or uses in connection with its business; and (c) it is the true and lawful owner or licensee of all rights in the Copyright registrations listed on the most recent Perfection Certificate delivered by such Grantor to the Administrative Agent and that said Copyrights constitute all the registered United States copyrights that such Grantor now owns. Each Grantor further warrants that it is aware of no third-party claim that any aspect of such Grantor's present or contemplated business operations infringes or will infringe any trademark, service mark, patent, trade secret or copyright in a manner which could have a material adverse effect on the financial condition, business or property of such Grantor.

Section 7.02 Collateral Assignments; Further Assurances. Upon request of the Administrative Agent whenever made, any Grantor shall promptly execute and deliver to the Administrative Agent such Collateral Assignment Agreements as the Administrative Agent shall request in connection with such Grantor's Intellectual Property. Each Grantor agrees that it will take such action, and deliver such documents or instruments, as the Administrative Agent shall request in connection with the preparation, filing or registration and enforcement of any Collateral Assignment Agreement.

Section 7.03 Licenses and Assignments. Each Grantor hereby agrees not to divest itself of any material right under or with respect to any Intellectual Property material to its business other than in the ordinary course of business or as expressly permitted pursuant to the Credit Agreement (including Permitted Licenses) absent prior written approval of the Administrative Agent.

Section 7.04 Infringements. Each Grantor agrees, promptly upon learning thereof, to notify the Administrative Agent in writing of the name and address of, and to furnish such pertinent information that may be available with respect to, any party who may be infringing or otherwise violating any of such Grantor's rights in and to any Intellectual Property that could reasonably be expected to have a material adverse effect on the financial condition, business or property of such Grantor (any such Intellectual Property, "Significant Intellectual Property"), or with respect to any party claiming that such Grantor's use of any Significant Intellectual Property violates any property right of that party, to the extent that such infringement or violation could reasonably be expected to have a material adverse effect on the financial condition, business or property of such Grantor. Each Grantor further agrees, unless otherwise directed by the Administrative Agent, to take actions to curtail or abate such infringement in a manner consistent with its past practice and in the ordinary course of business.

## Section 7.05 Trademarks.

(a) Preservation of Trademarks. Each Grantor agrees to use or license the use of its Trademarks in interstate commerce during the time in which this Agreement is in effect, sufficiently to preserve such Trademarks as trademarks or service marks registered under the laws of the United States, *provided, however,* that no Grantor shall be obligated to use or license any Trademark in interstate commerce or otherwise if such Grantor, in its commercially reasonable judgment, determines that such Trademark has no further commercial value to such Grantor and the failure to use or license such Trademark would not reasonably be expected to cause material liability to such Grantor.

(b) Maintenance of Registration. Each Grantor shall, at its own expense, diligently process all documents required by the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.* to maintain trademark registration that the failure to so maintain could reasonably be expected to have a Material Adverse Effect, including but not limited to affidavits of use and applications for renewals of registration in the United States Patent and Trademark Office for all of its Trademarks pursuant to 15 U.S.C. §§ 1058(a), 1059 and 1065, and shall pay all fees and disbursements in connection therewith, and shall not abandon any such filing of affidavit of use or any such application of renewal prior to the exhaustion of all administrative and judicial remedies without prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld.

(c) Future Registered Trademarks. If any mark registration is issued hereafter to a Grantor as a result of any application now or hereafter pending before the United States Patent and Trademark Office, then, along with updates to the Perfection Certificate required to be delivered pursuant to Section 6.01(m) of the Credit Agreement, such Grantor shall deliver to the Administrative Agent a grant of security in such mark to the Administrative Agent, confirming the grant thereof hereunder, the form of such confirmatory grant to be in form and substance acceptable to the Administrative Agent.

## Section 7.06 Patents.

(a) Maintenance of Patents. Each Grantor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. § 41 to maintain in force rights under each Patent.

(b) Prosecution of Patent Applications. Each Grantor shall diligently prosecute all material applications for United States patents, and shall not abandon any such application, except in favor of a continuation application based on such application, prior to exhaustion of all administrative and judicial remedies, absent written consent of the Administrative Agent or as determined by such Grantor in its commercially reasonable judgment, which consent shall not be unreasonably withheld.

Section 7.07 Other Patents and Copyrights. Along with updates to the Perfection Certificate required to be delivered pursuant to Section 6.01(m) of the Credit Agreement, the relevant Grantor shall deliver to the Administrative Agent a grant of security as to any newly acquired United States Patent or Copyright, or application for a United States Patent or Copyright, as the case may be, confirming the grant thereof hereunder, the form of such confirmatory grant to be in form and substance acceptable to the Administrative Agent.

Section 7.08 Remedies Relating to Intellectual Property. If an Event of Default shall occur and be continuing, the Administrative Agent may, by written notice to the relevant Grantor, take any or all of the following actions: (a) declare the entire right, title and interest of such Grantor in and to each of the Copyrights, Patents and Trademarks, together with all trademark rights and rights of protection to the same, vested, in which event such rights, title and interest shall immediately vest in the Administrative Agent for the benefit of the Secured Creditors, in which case such Grantor agrees to execute an assignment in form and substance reasonably satisfactory to the Administrative Agent of all its rights, title and interest in and to the Copyrights, Patents and Trademarks to the Administrative Agent for the benefit of the Secured Creditors; (b) take and practice or sell the Copyrights or Patents and take and use or sell the Trademarks and the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of the Grantor in connection with which the Trademarks have been used; and (c) direct such Grantor to refrain, in which event such Grantor shall refrain, from using the Copyrights, Patents and Trademarks in any manner whatsoever, directly or indirectly, and, if requested by the Administrative Agent, change such Grantor's corporate name to eliminate therefrom any use of any mark and execute such other and further documents that the Administrative Agent may request in connection with such Grantor's obligations under this Agreement and to transfer ownership of the Copyrights, Patents and Trademarks, and registrations and any pending trademark application, to the Administrative Agent for the benefit of the Secured Creditors.

## ARTICLE VIII.

### REMEDIES UPON OCCURRENCE OF EVENT OF DEFAULT

Section 8.01 Remedies Generally. Each Grantor agrees that, if any Event of Default shall have occurred and be continuing, then and in every such case, subject to any mandatory requirements of applicable law then in effect, the Administrative Agent, in addition to any rights now or hereafter existing under applicable law, shall have all rights as a secured creditor under the UCC in all relevant jurisdictions and may exercise any or all of the following rights (all of which each Grantor hereby agrees is commercially reasonable to the fullest extent permitted under applicable law now or hereafter in effect):

- (a) personally, or by agents, attorneys or other authorized representatives, immediately retake possession of the Collateral or any part thereof from such Grantor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Grantor's or such other Person's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Grantor;
- (b) instruct the obligor or obligors on any Account Receivable, agreement, instrument or other obligation (including, without limitation, account debtors) constituting the Collateral to make any payment required by the terms of such Account Receivable, agreement, instrument or other obligation directly to the Administrative Agent and/or directly to a lockbox under the sole dominion and control of the Administrative Agent;
- (c) sell, assign or otherwise liquidate, or direct such Grantor to sell, assign or otherwise liquidate, any or all of the Collateral or any part thereof, and take possession of the proceeds of any such sale or liquidation;
- (d) issue a Notice of Exclusive Control with respect to any or all of the Collateral Accounts and issue entitlement orders or instructions with respect thereto;
- (e) withdraw any or all monies, securities and/or instruments in any Collateral Account for application to the Secured Obligations in accordance with Section 8.05 hereof;
- (f) pay and discharge taxes, Liens or claims on or against any of the Collateral;

(g) pay, perform or satisfy, or cause to be paid, performed or satisfied, for the benefit of any Grantor, any of the obligations, terms, covenants, provisions or conditions to be paid, observed, performed or satisfied by such Grantor under any contract, agreement or instrument relating to its Collateral, all in accordance with the terms, covenants, provisions and conditions thereof, as and to the extent that such Grantor fails or refuses to perform or satisfy the same;

(h) enter into any extension of, or any other agreement in any way relating to, any of the Collateral;

(i) make any compromise or settlement the Administrative Agent reasonably deems desirable or necessary with respect to any of the Collateral; and/or

(j) take possession of the Collateral or any part thereof, by directing such Grantor or any other Person in possession thereof in writing to deliver the same to the Administrative Agent at any place or places designated by the Administrative Agent, in which event such Grantor shall at its own expense:

(i) forthwith cause the same to be moved to the place or places so designated by the Administrative Agent and delivered to the Administrative Agent,

(ii) store and keep any Collateral so delivered to the Administrative Agent at such place or places pending further action by the Administrative Agent as provided in Section 8.02, and

(iii) while the Collateral shall be so stored and kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain them in substantially the same condition prior to such action;

it being understood that such Grantor's obligation to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Administrative Agent shall be entitled to a decree requiring specific performance by such Grantor of said obligation.

**Section 8.02 Disposition of the Collateral.** Upon the occurrence and during the continuance of an Event of Default, any Collateral repossessed by the Administrative Agent under or pursuant to Section 8.01 and any other Collateral whether or not so repossessed by the Administrative Agent, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale of the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Administrative Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Administrative Agent or after any overhaul or repair which the Administrative Agent shall determine to be commercially reasonable. Except in the case of any Collateral that is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, (a) in the case of any such disposition which shall be a private sale or other private proceedings permitted by such requirements, such sale shall be made upon not less than ten (10) days' written notice to such Grantor specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for the ten (10) days after the giving of such notice, to the right of the relevant Grantor or any nominee of the relevant Grantor to acquire the Collateral involved at a price or for such other consideration at least equal to the intended sale price or other consideration so specified, and (b) in the case of any such disposition which shall be a public sale permitted by such requirements, such sale shall be made upon not less than ten (10) days' written notice to the relevant Grantor specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Administrative Agent's sole option, be subject to reserve), after publication of notice of such auction not less than ten (10) days prior thereto in two newspapers in general circulation in the city where such Collateral is located. To the extent permitted by any such requirement of law, the Administrative Agent on behalf of the Secured Creditors (or certain of them) may bid for and become the purchaser (by bidding in Secured Obligations or otherwise) of the Collateral or any item thereof offered for sale in accordance with this Section without accountability to the relevant Grantor (except to the extent of surplus money received as provided in Section 8.05). Unless so obligated under mandatory requirements of applicable law, the Administrative Agent shall not make dispositions of the Collateral within a period of time which does not permit the giving of notice to the Grantor as hereinabove specified. The Administrative Agent need give the relevant Grantor only such notice of disposition as the Administrative Agent shall deem to be reasonably practicable in view of such mandatory requirements of applicable law.

Section 8.03 Grant of License to Use Intellectual Property. For the purpose of enabling the Administrative Agent to exercise rights and remedies under this Article VIII at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies and for no other purpose, each Grantor hereby grants to the Administrative Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, assign or sublicense any of the Intellectual Property of such Grantor, now owned or hereafter acquired by such Grantor, and wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

Section 8.04 Waiver of Claims. Except as otherwise provided in this Agreement, each Grantor hereby waives, to the extent permitted by law: (a) all damages occasioned by any taking of possession of the Collateral as permitted hereunder except any damages which are the direct result of the Administrative Agent's gross negligence or willful misconduct; (b) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Administrative Agent's rights hereunder; and (c) all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Grantor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws to the fullest extent permitted by applicable law now or hereafter in effect. Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Grantor therein and thereto, and shall be a perpetual bar both at law and in equity against the relevant Grantor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the relevant Grantor.

Section 8.05 Application of Proceeds. All Collateral and proceeds of Collateral obtained and realized by the Administrative Agent in connection with the enforcement of this Agreement pursuant to this Article VIII shall be applied as follows:

(i) *first*, to the payment to the Administrative Agent, for application to the Secured Obligations as provided in Section 8.03 of the Credit Agreement; and

(ii) *second*, to the extent remaining after the application pursuant to the preceding clause (i) and following the termination of this Agreement pursuant to Section 9.09 hereof, to the relevant Grantor or to whomever may be lawfully entitled to receive such payment.

Section 8.06 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to the Administrative Agent shall be in addition to every other right, power and remedy specifically given under this Agreement, any Designated Hedge Document or the other Loan Documents or now or hereafter existing at law or in equity, or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Administrative Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Administrative Agent in the exercise of any such right, power or remedy, or partial or single exercise thereof, and no renewal or extension of any of the Secured Obligations, shall impair or constitute a waiver of any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence therein. No notice to or demand on any Grantor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Administrative Agent to any other or further action in any circumstances without notice or demand. In the event that the Administrative Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Administrative Agent may recover reasonable, actual expenses, including attorneys' fees, and the amounts thereof shall be included in such judgment.

Section 8.07 Discontinuance of Proceedings. In case the Administrative Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Administrative Agent, then and in every such case the relevant Grantor, the Administrative Agent and each holder of any of the Secured Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Administrative Agent shall continue as if no such proceeding had been instituted.

Section 8.08 Purchasers of Collateral. Upon any sale of any of the Collateral by the Administrative Agent hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of the Administrative Agent or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such officer or be answerable in any way for the misapplication or nonapplication thereof.

## ARTICLE IX.

### MISCELLANEOUS

Section 9.01 Notices. Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing, sent by telecopier, electronic mail, mail or delivery, (a) if to the Borrower, at its address specified in or pursuant to the Credit Agreement, (b) if to any other Grantor, to it c/o the Borrower at its address specified in or pursuant to the Credit Agreement, (c) if to the Administrative Agent, to it at the Notice Office of the Administrative Agent, (d) if to any Lender, at its address specified in or pursuant to the Credit Agreement, and (e) if to any Designated Hedge Creditor, at such address as such Designated Hedge Creditor shall have specified in writing to each Grantor and the Administrative Agent; or in any case at such other address as any of the Persons listed above may hereafter notify the others in writing. All such notices and communications shall be mailed, telecopied, sent by overnight courier or delivered, and shall be effective when received.

Section 9.02 Entire Agreement. This Agreement, the other Loan Documents and any Designated Hedge Documents represent the final agreement among the parties with respect to the subject matter hereof and thereof, supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof and thereof, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among the parties. There are no unwritten oral agreements among the parties.

Section 9.03 Obligations Absolute. The obligations of each Grantor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, other than indefeasible payment in full of, and complete performance of, all of the Secured Obligations, including, without limitation:

(a) any renewal, extension, amendment or modification of, or addition or supplement to, or deletion from the other Loan Documents or any Designated Hedge Document, or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof;

(b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument or this Agreement except as expressly provided in such renewal, extension, amendment, modification, addition, supplement, assignment or transfer;

(c) any furnishing of any additional security to the Administrative Agent or its assignee or any acceptance thereof or any release of any security by the Administrative Agent or its assignee;

(d) any limitation on any Person's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof;

(e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to a Grantor or any Subsidiary of a Grantor, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not a Grantor shall have notice or knowledge of any of the foregoing; or

(f) to the fullest extent permitted by applicable law now or hereafter in effect, any other event or circumstance which, but for this provision, might release or discharge a guarantor or other surety from its obligations as such.

Section 9.04 Successors and Assigns. This Agreement shall be binding upon each Grantor and its successors and assigns and shall inure to the benefit of the Administrative Agent and each other Secured Creditor and their respective permitted successors and permitted assigns, *provided* that no Grantor may transfer or assign any or all of its rights or obligations hereunder without the written consent of the Administrative Agent. All agreements, statements, representations and warranties made by each Grantor herein or in any certificate or other instrument delivered by such Grantor or on its behalf under this Agreement shall be considered to have been relied upon by the Secured Creditors and shall survive the execution and delivery of this Agreement, the other Loan Documents and any Designated Hedge Document regardless of any investigation made by the Secured Creditors on their behalf.

Section 9.05 Headings Descriptive. The headings of the several Sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 9.06 **Severability.** Any provision of this Agreement which 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.

Section 9.07 **Enforcement Expenses, etc.** The Grantors hereby jointly and severally agree to pay, to the extent not paid pursuant to Section 11.01 of the Credit Agreement, all reasonable out-of-pocket costs and expenses of the Administrative Agent and each other Secured Creditor in connection with the enforcement of this Agreement, the preservation of the Collateral, the perfection of the security interest, and any amendment, waiver or consent relating hereto (including, without limitation, the fees and disbursements of counsel employed by the Administrative Agent or any of the other Secured Creditors).

Section 9.08 **Release of Portions of Collateral.**

(a) So long as no Event of Default is in existence or would exist after the application of proceeds as provided below, the Administrative Agent shall, at the request of a Grantor, release any or all of the Collateral of such Grantor, *provided* that (i) such release is permitted by the terms of the Credit Agreement (it being agreed for such purposes that a release will be deemed “permitted by the terms of the Credit Agreement” if the proposed transaction constitutes an exception contained in Section 7.02 of the Credit Agreement) or otherwise has been approved in writing by the Required Lenders (or, to the extent required by Section 11.12 of the Credit Agreement, all of the applicable Lenders) and (ii) the proceeds of such Collateral are to be applied as required pursuant to the Credit Agreement or any consent or waiver entered into with respect thereto.

(b) At any time that a Grantor desires that the Administrative Agent take any action to give effect to any release of Collateral pursuant to the foregoing Section 9.08(a), it shall deliver to the Administrative Agent a certificate signed by a principal executive officer stating that the release of the respective Collateral is permitted pursuant to Section 9.08(a). In the event that any part of the Collateral is released as provided in Section 9.08(a), the Administrative Agent, at the request and expense of a Grantor, will duly release such Collateral and assign, transfer and deliver to such Grantor (without recourse and without any representation or warranty) such of the Collateral as is then being (or has been) so sold and as may be in the possession of the Administrative Agent and has not theretofore been released pursuant to this Agreement. The Administrative Agent shall have no liability whatsoever to any Secured Creditor as the result of any release of Collateral by it as permitted by this Section 9.08.

Section 9.09 **Termination.** After the termination of all of the Commitments and all of the Obligations have been fully and finally discharged (other than obligation in respect of Designated Hedge Agreements, contingent indemnity obligations and obligations in respect of Letters of Credit that have been Cash Collateralized) and the obligations of the Administrative Agent and the Lenders to provide additional credit under the Loan Documents have been terminated irrevocably, this Agreement shall terminate, and the Administrative Agent, at the request and expense of the Grantors, will execute and deliver to the relevant Grantor a proper instrument or instruments (including, without limitation, UCC termination statements on form UCC-3) acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to the relevant Grantor (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Administrative Agent and as has not theretofore been sold or otherwise applied or released pursuant to this Agreement.

Section 9.10 **Administrative Agent.** The Administrative Agent will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement. The acceptance by the Administrative Agent of this Agreement, with all the rights, powers, privileges and authority so created, shall not at any time or in any event obligate the Administrative Agent to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral. By accepting the benefits of this Agreement, each Secured Creditor acknowledges and agrees that the rights and obligations of the Administrative Agent shall be as set forth in Article IX of the Credit Agreement. Notwithstanding anything to the contrary contained in Section 9.03 of this Agreement or Section 11.12 of the Credit Agreement, this Section 9.10, and the duties and obligations of the Administrative Agent set forth in this Section 9.10, may not be amended or modified without the consent of the Administrative Agent.

Section 9.11 Only Administrative Agent to Enforce on Behalf of Secured Creditors. The Secured Creditors agree by their acceptance of the benefits hereof that this Agreement may be enforced on their behalf only by the action of the Administrative Agent, acting upon the instructions of the Required Lenders (or, after all Loan Document Obligations have been paid in full, instructions of the holders of at least 51% of the outstanding Designated Hedge Document Obligations) and that no other Secured Creditor shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent, for the benefit of the Secured Creditors, upon the terms of this Agreement.

Section 9.12 Other Creditors, etc. Not Third-Party Beneficiaries. No creditor of any Grantor or any of its Affiliates, or other Person claiming by, through or under any Grantor or any of its Affiliates, other than the Administrative Agent and the other Secured Creditors, and their respective successors and assigns, shall be a beneficiary or third-party beneficiary of this Agreement or otherwise shall derive any right or benefit herefrom.

Section 9.13 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, including via facsimile transmission or other electronic transmission capable of authentication, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same agreement. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent.

Section 9.14 Amendments; Additional Grantors. No amendment or waiver of any provision of this Agreement and no consent to any departure by any Grantor shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent acting at the direction of the requisite number of Lenders, if any, required pursuant to Section 11.12 of the Credit Agreement, and the applicable Grantor or Grantors, as the case may be, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Upon the execution and delivery by any Person of a Security Agreement Joinder, (a) such Person shall be referred to as an "Additional Grantor" and shall become and be a Grantor hereunder, and each reference in this Agreement to a "Grantor" shall also mean and be a reference to such Additional Grantor, and each reference in any other Loan Document to a "Grantor" shall also mean and be a reference to such Additional Grantor, and (b) each reference herein to "this Agreement," "hereunder," "hereof" or words of like import referring to this Agreement, and each reference in any other Loan Document to the "Security Agreement," "thereunder," "thereof" or words of like import referring to this Agreement, shall mean and be a reference to this Agreement as supplemented by such Security Agreement Joinder.

Section 9.15 Separate Actions. A separate action may be brought and prosecuted against any Grantor, any other guarantor or obligor or the Borrower, and whether or not any other Grantor, any other guarantor or obligor or the Borrower be joined in such action or actions.

Section 9.16 Full Recourse Obligations; Effect of Fraudulent Transfer Laws. It is the desire and intent of each Grantor, the Administrative Agent and the other Secured Creditors that this Agreement shall be enforced as a full recourse obligation of each Grantor to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If and to the extent that the obligations of any Grantor under this Agreement would, in the absence of this sentence, be adjudicated to be invalid or unenforceable because of any applicable state or federal law relating to fraudulent conveyances or transfers, then the amount of such Grantor liability hereunder in respect of the Secured Obligations shall be deemed to be reduced *ab initio* to that maximum amount that would be permitted without causing such Grantor's obligations hereunder to be so invalidated.

Section 9.17 Governing Law; Venue; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH GRANTOR CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH GRANTOR IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HERAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR OTHER DOCUMENT RELATED THERETO. EACH GRANTOR WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

(c) THE ADMINISTRATIVE AGENT AND EACH GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HERAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH GRANTOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 9.18 Acknowledgement Regarding Any Support QFCs. The provisions and acknowledgements contained in Section 11.30 of the Credit Agreement are hereby incorporated into this Security Agreement, *mutatis mutandis*.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

LEMAITRE VASCULAR, INC., as Grantor

By: /s/ Joseph P. Pellegrino, Jr.  
Name: Joseph P. Pellegrino, Jr.  
Title: Chief Financial Officer

*[Signature page to Pledge and Security Agreement]*

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Accepted by:

KEYBANK NATIONAL ASSOCIATION,  
as Administrative Agent

By: /s/ Thomas A. Crandell

Name: Thomas A. Crandell

Title: Senior Vice President

*[Signature page to Pledge and Security Agreement]*

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The following schedule has been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of this schedule will be provided to the Securities and Exchange Commission upon request.

| <b><u>Schedule</u></b> | <b><u>Description</u></b> |
|------------------------|---------------------------|
| Schedule 1             | Pledged Collateral        |

## LeMaitre Vascular Acquires Artegraft

BURLINGTON, Mass., June 22, 2020 -- LeMaitre Vascular, Inc. (Nasdaq: LMAT) announced that it has acquired the business and assets of Artegraft, Inc. for \$90.0 million, including \$72.5 million in cash paid at closing (\$65.0 million to Artegraft plus \$7.5 in escrow to be released December 31, 2021) as well as potential earnout payments of \$17.5 million payable based upon future sales of the acquired business. Under the terms of the deal, LeMaitre will continue to operate Artegraft's manufacturing facility in North Brunswick, NJ for at least three and a half years and will retain most of Artegraft's employees, including seven sales & marketing personnel.

Artegraft processes and sells biologic vascular grafts that are derived from bovine carotid arteries and are implanted primarily in hemodialysis access patients. The products are marketed under the brand Artegraft® and are sold only in the US. Artegraft generated trade sales of \$15.6 million and estimated hospital-level sales of \$18.6 million during the twelve-month period ended May 31, 2020. Artegraft's unit sales grew 10% in 2019.

Dave Roberts, LeMaitre Vascular's President, commented, "We are pleased to add Artegraft to our product offering, augmenting the suite of biologic and dialysis access products used by our core customer, the vascular surgeon. With this acquisition, we expect Artegraft to be the largest product line in our US sales bag and the cornerstone of our offering of devices used to treat patients with end-stage renal disease."

Rick Gibson, CEO of Artegraft, commented, "With their focus on hemodialysis access procedures, biologic implants, and the vascular surgeon, LeMaitre Vascular is ideally positioned to build on Artegraft's success. We look forward to working with the LeMaitre team to ensure a smooth transition of the business."

LeMaitre Vascular financed the acquisition and related expenses with available cash on hand and a \$65.0 million senior secured credit facility. The credit facility comprises a \$40.0 million five-year term loan and a \$25.0 million revolver and was provided by KeyBank National Association and Truist Bank.

SVB Leerink acted as exclusive financial advisor and Lowenstein Sandler LLP served as legal counsel to Artegraft. Cooley LLP served as legal counsel to LeMaitre Vascular.

### Business Outlook

LeMaitre Vascular expects the acquisition to be accretive to profits in the first 12 months following the closing. Further guidance on how this acquisition will affect LeMaitre Vascular's 2020 revenue, operating income and EPS expectations will be provided at the Company's Q2 2020 earnings call in July.

### About LeMaitre Vascular

LeMaitre Vascular is a provider of devices, implants and services for the treatment of peripheral vascular disease, a condition that affects more than 200 million people worldwide. The Company develops, manufactures and markets disposable and implantable vascular devices to address the needs of its core customer, the vascular surgeon. The Company's diversified product portfolio consists of brand name devices used in arteries and veins outside of the heart. Additional information can be found at [www.lemaitre.com](http://www.lemaitre.com).

LeMaitre and Artegraft are registered trademarks of LeMaitre Vascular, Inc.

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## **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Statements in this press release regarding the Company's business that are not historical facts are "forward-looking statements" that involve risks and uncertainties. Forward-looking statements are based on management's current, preliminary expectations and are subject to risks and uncertainties that could cause actual results to differ from the results expected, including, but not limited to, the risk that the Company may not realize the anticipated benefits of its strategic activities; risks related to the integration of acquisition targets; risks related to the transition of manufacturing from a target to the Company; the duration and severity of the impact of COVID-19 on the global economy, our customers, our suppliers and our company; compliance with foreign regulatory requirements to market our products outside the United States; the risk of significant fluctuations in our quarterly and annual results due to numerous factors; the risk that assumptions about the market for the Company's products and the productivity of the Company's direct sales force and distributors may not be correct; the risk that we may not be able to maintain our recent levels of profitability; the acceleration or deceleration of product growth rates; risks related to product demand and market acceptance of the Company's products and pricing; the risk that a recall of our products could result in significant costs or negative publicity; the risk that the Company is not successful in transitioning to a direct-selling model in new territories; and other risks and uncertainties included under the heading "Risk Factors" in our most recent Annual Report on Form 10-K, as updated by our subsequent filings with the SEC, all of which are available on the Company's investor relations website at <http://www.lemaire.com> and on the SEC's website at <http://www.sec.gov>. Undue reliance should not be placed on forward-looking statements, which speak only as of the date they are made. The Company undertakes no obligation to update publicly any forward-looking statements to reflect new information, events, or circumstances after the date they were made, or to reflect the occurrence of unanticipated events.

## **Contacts**

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Source: LeMaitre Vascular, Inc.