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): September 23, 2020

DELTA AIR LINES, INC.
(Exact name of registrant as specified in its charter)

Delaware 001-05424 58-0218548
(State or other jurisdiction
of incorporation) (Commission File Number) (IRS Employer
Identification No.)

P.O. Box 20706, Atlanta, Georgia 30320-6001
(Address of principal executive offices)

Registrant’s telephone number, including area code: (404) 715-2600

Registrant’s Website address: www.delta.com

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 (see General Instruction A.2. below):

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

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

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<td>Common Stock, par value $0.0001 per share</td>
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Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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. ☐
Item 1.01 Entry into a Material Definitive Agreement.

On September 23, 2020, Delta Air Lines, Inc. (“Delta”) and SkyMiles IP Ltd., a newly formed exempted company incorporated with limited liability under the laws of the Cayman Islands and an indirect wholly-owned subsidiary of Delta (“SMIP” and together with Delta, the “Issuers”), completed the previously announced private offering of an aggregate of $2.5 billion principal amount of 4.500% senior secured notes due 2025 (the “2025 Notes”) and an aggregate of $3.5 billion principal amount of 4.750% senior secured notes due 2028 (the “2028 Notes,” together with the 2025 Notes, the “Notes”). The Notes are guaranteed by SkyMiles Holdings Ltd. (“SMHL”), SkyMiles IP Holdings Ltd. (“SMIH”) and SkyMiles IP Finance Ltd. (“SMIF” and together with SMHL and SMIH, the “Guarantors”), each of which are newly formed exempted companies incorporated with limited liability under the laws of the Cayman Islands and direct or indirect wholly-owned subsidiaries of Delta. The Notes were issued pursuant to an indenture, dated as of September 23, 2020, among Delta, SMIP, the Guarantors and U.S. Bank National Association, as trustee (the “Indenture”). Concurrently with the issuance of the Notes, Delta and SMIP, as co-borrowers, and the Guarantors entered into a credit agreement with Barclays Bank PLC, as administrative agent, U.S. Bank National Association, as collateral administrator, and the lenders party thereto, pursuant to which Delta and SMIP borrowed an aggregate principal amount of $3.0 billion (the “New Credit Facility,” and collectively with the Notes, the “SkyMiles Financing”).

Subject to certain permitted liens and other exceptions, the Notes, note guarantees and the loans under the New Credit Facility will be secured by first-priority security interests in, and pledge of, the SkyMiles Agreements (as defined in the Indenture and the New Credit Facility) (including all payments thereunder) and rights under certain intercompany agreements, including the IP Licenses (as defined below), certain rights under the SkyMiles program (as defined in the Indenture and the New Credit Facility), certain deposit accounts that receive revenue under SkyMiles Agreements, the equity of SMIP and substantially all other assets of SMIF and SMIH.

The Notes, the note guarantees and the loans under the New Credit Facility (i) rank equally in right of payment with all of the Issuers’ and the Guarantors’ existing and future senior indebtedness, (ii) are effectively senior to all existing and future indebtedness of the Issuers and the Guarantors that is not secured by a lien, or is secured by a junior-priority lien, on the collateral, to the extent of the value of the collateral, (iii) are effectively subordinated to any existing or future indebtedness of the Issuers and the Guarantors that is secured by liens on assets that do not constitute a part of the collateral to the extent of the value of such assets and (iv) rank senior in right of payment to the Issuers’ and the Guarantors’ future subordinated indebtedness. The Notes, the note guarantees and the loans under the New Credit Facility will also be structurally subordinated to all existing and future obligations, including trade payables, of Delta’s subsidiaries, other than SMIP and the Guarantors.

Payment Terms of the Notes and Loans under the New Credit Facility

The 2025 Notes bear interest at a rate of 4.500% per annum and will mature on October 20, 2025. The 2028 Notes bear interest at a rate of 4.750% per annum and will mature on October 20, 2028. Interest on the Notes is payable in quarterly installments on January 20, April 20, July 20 and October 20 of each year, beginning January 20, 2021 (each a “Payment Date”). The principal on the 2025 Notes will be repaid in quarterly installments of 1/12 of the aggregate principal amount of the 2025 Notes, or approximately $208.333 million, on each Payment Date beginning with the Payment Date in January 2023. The principal on the 2028 Notes will be repaid in quarterly installments of 1/12 of the aggregate principal amount of the 2028 Notes, or approximately $291.667 million, on each Payment Date beginning with the Payment Date in January 2026.

The scheduled maturity date of the New Credit Facility is October 20, 2027. Loans outstanding under the New Credit Facility bear interest at a variable rate equal to LIBOR (but not less than 1.0% per annum), plus a margin of 3.75% per annum, payable on each Payment Date. The principal on loans outstanding under the New Credit Facility will be repaid in quarterly installments of 5.0% of the aggregate principal amount of the New Credit Facility, or $150.0 million, on each Payment Date beginning with the Payment Date in January 2023. These amortization payments (as well as those for the Notes) will be subject to the occurrence of certain early amortization events, including the failure to satisfy a minimum debt service coverage ratio at specified determination dates.

The Indenture and the New Credit Facility contain mandatory prepayment provisions triggered upon (i) the issuance or incurrence by SMIP or the Guarantors of certain indebtedness or (ii) the receipt by Delta or its subsidiaries of net proceeds from pre-paid mile purchases exceeding $505.0 million, with prepayment required only in respect of net proceeds from such purchases exceeding $500.0 million. Each of these prepayments would also require payment of an applicable premium. Certain other events, including a Parent Change of Control Triggering Event (as defined in the Indenture and the New Credit Facility) and certain collateral sales exceeding a specified threshold, will also trigger mandatory repurchase or mandatory prepayment provisions under the Indenture and the New Credit Facility, respectively. Optional redemption or prepayment of some or all of the Notes or loans outstanding under the New Credit Facility is also permitted, although payment of an applicable premium is required where specified in the Indenture and New Credit Facility.
Other Terms of the Notes and Loans under the New Credit Facility

The Indenture and the New Credit Facility contain certain covenants that limit the ability of SMIP, the Guarantors and, in certain circumstances, Delta to, among other things, (i) incur additional indebtedness, (ii) incur certain liens on the collateral, (iii) merge, consolidate or sell substantially all of their assets, (iv) dispose of the collateral, (v) sell pre-paid miles in excess of $550.0 million in the aggregate, and (vi) terminate, amend, waive, supplement or modify the IP Licenses, or exercise rights and remedies thereunder, except under certain circumstances. The Indenture and the New Credit Facility also contain covenants that limit the ability of SMIP and the Guarantors to make restricted payments and engage in certain business activities. Delta and SMIP are also prohibited from substantially reducing the SkyMiles program business or modifying the terms of the SkyMiles program in a manner that would reasonably be expected to materially impair repayment of the SkyMiles Financing obligations (described as a “Payment Material Adverse Effect” in the Indenture and the New Credit Facility), and Delta and its subsidiaries are prohibited from changing the policies and procedures of the SkyMiles program in a manner that would reasonably be expected to have a Payment Material Adverse Effect or operating a competing loyalty program. Notwithstanding these restrictions, the SkyMiles program will operate as it has in the past, and the entry into the SkyMiles Financing will not have any impact on the benefits offered to SkyMiles members.

In addition, subject to certain exceptions, the Indenture and the New Credit Facility restrict the ability of Delta, SMIP or any Guarantor to terminate, or modify certain terms within, the intercompany agreement governing the relationship between Delta and SMIP with respect to the SkyMiles program.

The Indenture and the New Credit Facility also require Delta and SMIP to comply with certain affirmative covenants, including (i) certain reporting requirements and (ii) the use of commercially reasonable efforts to cause sufficient counterparties to SkyMiles Agreements to direct payments of Transaction Revenues (as defined in the Indenture and the New Credit Facility) into a collections account, such that at least 90% of SkyMiles Revenues in a quarterly reporting period are deposited directly into such account, with amounts to be distributed from such account for the payment of fees, principal and interest on the Notes and the loans outstanding under the New Credit Facility pursuant to a payment waterfall described in the Indenture and New Credit Agreement, respectively. In addition, the Indenture and the New Credit Facility require Delta to maintain minimum liquidity, defined as the sum of (a) unrestricted cash and cash equivalents and (b) the aggregate principal amount committed and available to be drawn under all of Delta’s revolving credit facilities, at the close of any business day of at least $2.0 billion.

Subject to certain materiality thresholds, qualifications, exceptions, “baskets” and grace and cure periods, the Indenture and the New Credit Facility contain various events of default, including payment defaults, covenant defaults, cross-defaults to certain indebtedness, termination of certain agreements related to the SkyMiles program, bankruptcy events of SMIP or any Guarantor, and a change of control of SMIP or any Guarantor. A bankruptcy event of Delta is not itself an event of default; following a Delta bankruptcy, an event of default would only occur if Delta failed to satisfy certain enumerated bankruptcy case milestones (as described in the Indenture and the New Credit Facility). Upon the occurrence of an event of default, the outstanding obligations under the Indenture and the New Credit Facility may (or, with respect to the bankruptcy events noted above, shall) be accelerated and become due and payable immediately.

Terms of Certain Intercompany Agreements Related to the SkyMiles Financing

In connection with the issuance of the Notes and entry into the New Credit Facility, Delta, SMIP and the Guarantors entered into a series of transactions that resulted in the transfer to SMIF of, among other things, Delta’s rights to certain data and other intellectual property used in the SkyMiles program (subject to certain exceptions) (such assets, the “Transferred SkyMiles IP”). SMIP has entered into a license agreement with SMIF pursuant to which SMIP has granted to SMIF an exclusive, irrevocable (subject to certain termination rights), perpetual, worldwide, royalty-bearing license to use the Transferred SkyMiles IP (the “SMIF License”), and SMIF has in turn granted to Delta an exclusive, irrevocable (subject to certain termination rights), perpetual, worldwide, royalty-bearing sublicense to use the Transferred SkyMiles IP (together with the SMIF License, the “IP Licenses”). The IP Licenses would be terminated, and Delta’s right to use the Transferred SkyMiles IP would cease, upon specified termination events, including, but not limited to, the occurrence of an event of default under the Indenture or the New Credit Facility. In certain circumstances, such a termination would trigger a liquidated damages payment in an amount that is greater than the initial principal amount of the Notes and the loans under the New Credit Facility.

The descriptions of the arrangements above are summaries only, and the summaries of the Notes, the Indenture and the New Credit Facility are qualified in their entirety by reference to the full text of such documents. Any representations and warranties of a party set forth in such documents have been made solely for the benefit of the other parties thereto. Such representations and warranties were made only as of the date thereof or such other date as specified in such document, may be subject to a contractual standard of materiality different from what may be viewed as material to stockholders, or may have been used for the purpose of allocating risk between the parties rather than establishing matters as facts.
Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference, insofar as it relates to the creation of a direct financial obligation.

Item 2.06 Material Impairments.

Delta has decided to retire the company’s Boeing 717-200 aircraft and the remainder of its 767-300ER aircraft by December 2025 and its CRJ-200 aircraft by December 2023, earlier than previously scheduled. These plans are another step in Delta’s fleet simplification strategy, which is intended to streamline and modernize Delta’s fleet, enhance the customer experience, and generate cost savings. As a result of this determination, Delta evaluated its Boeing 717-200 and CRJ-200 aircraft as well as the remainder of its Boeing 767-300ER aircraft for impairment and, on September 23, 2020, concluded that the carrying value of these aircraft was no longer recoverable when compared to their estimated remaining future cash flows. Consequently, during the September 2020 quarter, Delta expects to record non-cash impairment charges associated with these aircraft. Although the actual amount of the charges has not yet been finalized, Delta expects the aggregate impairment and other related charges to be in a range from $2.0 billion and $2.5 billion, before tax. An immaterial amount associated with the charges is expected to result in future cash expenditures. Delta may continue to consider further opportunities for early aircraft retirements in an effort to modernize and simplify its fleet.

Item 7.01 Regulation FD Disclosure.

As previously announced, Delta also plans to record a charge associated with its voluntary early retirement and separation programs during the September 2020 quarter, which Delta continues to expect to be in a range from $2.7 billion to $3.3 billion, before tax.

Statements in this Form 8-K that are not historical facts, including statements about Delta’s estimates, expectations, beliefs, intentions, projections or strategies for the future, may be “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. Forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from historical experience or Delta’s present expectations. Known material risk factors applicable to Delta are described in “Item 1A. Risk Factors” of the company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and “Item 1A. Risk Factors” of Part II of the company’s Form 10-Q for the fiscal quarter ended June 30, 2020, other than risks that could apply to any issuer or offering. All forward-looking statements speak only as of the date made, and Delta undertakes no obligation to publicly update or revise any forward-looking statements to reflect events or circumstances that may arise after the date of this report except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 4.1 Indenture, dated as of September 23, 2020, among Delta, SMIP, the Guarantors and U.S. Bank National Association, as trustee

Exhibit 4.2 Form of 4.500% Senior Secured Note Due 2025 (included in Exhibit 4.1)

Exhibit 4.3 Form of 4.750% Senior Secured Note Due 2028 (included in Exhibit 4.1)

Exhibit 10.1 Term Loan Credit and Guaranty Agreement, dated as of September 23, 2020, among Delta, SMIP, the Guarantors, Barclays Bank PLC, as administrative agent, U.S. Bank National Association, as collateral administrator, and the lenders party thereto

Exhibit 104 The cover page from this Current Report on Form 8-K, formatted in Inline XBRL
SIGNATURES

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

DELTA AIR LINES, INC.

By: /s/ Paul A. Jacobson
Paul A. Jacobson,
Executive Vice President and Chief Financial Officer

Date: September 25, 2020
INDENTURE

Dated as of September 23, 2020

Among

SKYMILES IP LTD. and

DELTA AIR LINES, INC.,
as Issuers

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

4.500% SENIOR SECURED NOTES DUE 2025
4.750% SENIOR SECURED NOTES DUE 2028
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INDENTURE, dated as of September 23, 2020 among SkyMiles IP Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands (“Loyalty Co”) and Delta Air Lines, Inc., a Delaware Corporation (“Delta”, together with Loyalty Co, the “Issuers”), the Guarantors from time to time party hereto and U.S. Bank National Association, a national banking association, as Trustee.

WITNESSETH

WHEREAS, the Issuers have duly authorized the execution and delivery of this Indenture to provide for the issuance of (i) $2,500,000,000 aggregate principal amount of 4.500% Senior Secured Notes due 2025 (the “2025 Notes”), (ii) $3,500,000,000 aggregate principal amount of 4.750% Senior Secured Notes due 2028 (the “2028 Notes” and, together with the 2025 Notes, the “Initial Notes”) and (iii) any Additional Notes that may be issued after the Closing Date in compliance with this Indenture;

WHEREAS, the obligations of the Issuers with respect to the due and punctual payment of interest, principal and premium, if any, on the Notes and the performance and observation of each covenant and agreement under this Indenture on the part of the Issuers to be performed or observed will be unconditionally and irrevocably guaranteed by the Guarantors;

WHEREAS, all things necessary (i) to make the Notes, when executed and duly issued by the Issuers and authenticated and delivered hereunder, the valid obligations of the Issuers and (ii) to make this Indenture a valid agreement of the Issuers have been done; and

WHEREAS, the Guarantors party hereto have duly authorized the execution and delivery of this Indenture as guarantors of the Notes, and all things necessary (i) to make the Note Guarantee, when the Notes are executed and duly issued by the Issuers and authenticated and delivered hereunder, the valid obligations of such Guarantor and (ii) to make this Indenture a valid agreement of such Guarantor, in accordance with its terms, have been done.

NOW, THEREFORE, the Issuers, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“2025 Notes Make-Whole Amount” means, an amount equal to the excess, to the extent positive, of (a) the sum of the present values of the remaining scheduled payments of principal and interest on the 2025 Notes to be redeemed (exclusive of interest accrued to the redemption date) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points over (b) 100% of the principal amount of the 2025 Notes to be redeemed.

“2025 Notes Scheduled Principal Amortization Amount” means the principal amount that is payable in quarterly installments commencing on January 20, 2023 and payable on each Payment Date thereafter, initially in an aggregate amount per Payment Date equal to 1/12th of the principal amount of the 2025 Notes, which is approximately $208,333,333.33 (as such amounts may be increased or reduced, on a pro rata basis, from time to time as provided in Section 2.01(d), Section 2.11, Section 3.07(e), Section 3.08(g), Section 3.09(k) and Section 4.34(f)). For the avoidance of doubt, any payment of premium due under this Indenture shall not reduce the 2025 Notes Scheduled Principal Amortization Amount.
“2028 Notes Make-Whole Amount” means, an amount equal to the excess, to the extent positive, of (a) the sum of the present values of the remaining scheduled payments of principal and interest on the 2028 Notes to be redeemed (exclusive of interest accrued to the redemption date) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points over (b) 100% of the principal amount of the 2028 Notes to be redeemed.

“2028 Notes Scheduled Principal Amortization Amount” means the principal amount that is payable in quarterly installments commencing on January 20, 2026 and payable on each Payment Date thereafter, initially in an aggregate amount per Payment Date equal to 1/12th of the principal amount of the 2028 Notes, which is approximately $291,666,666.67 (as such amounts may be increased or reduced, on a pro rata basis, from time to time as provided in Section 2.01(d), Section 2.11, Section 3.07(e), Section 3.08(g), Section 3.09(k) and Section 4.34(f)). For the avoidance of doubt, any payment of premium due under this Indenture shall not reduce the 2028 Notes Scheduled Principal Amortization Amount.

“40 Act” means the Investment Company Act of 1940, as amended.

“144A Global Note” means a Global Note substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Notes Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“Account Control Agreements” means each multi-party security and control agreement entered into by any Grantor to satisfy the obligation of such Grantor as set forth in any Note Document, a financial institution which maintains one or more Deposit Accounts or securities accounts and the Trustee or the Master Collateral Agent, as applicable, that have been pledged as Collateral under the Collateral Documents or any other Notes Document, in each case giving the Trustee or Master Collateral Agent, as applicable, “control” (as defined in Section 9-104 or 9-106 of the UCC) over the applicable account and in form and substance reasonably satisfactory to the Collateral Controlling Party and the Master Collateral Agent.

“Act of Required Debtholders” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Additional Notes” means additional Notes (other than the Initial Notes) issued with respect to a Series of Notes under this Indenture in accordance with Section 2.01 and Section 4.23 hereof, as part of the same series as such Series of Notes.
“Administrative Agent” means Barclays Bank PLC, as administrative agent under the Credit Agreement, together with its permitted successors and assigns in such capacity.

“Affiliate” means, as to any Person, any other Person which directly or indirectly is in control of, or is controlled by, or is under common control with, such Person. For purposes of this definition, a Person shall be deemed to be “controlled by” another Person, if such controlling person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise; provided that the PBGC shall not be an Affiliate of any Issuer or any Guarantor, and no entity shall be deemed an Affiliate of the Issuer solely because Maples Corporate Services Limited or Walkers Fiduciary Limited or any of their Affiliates acts as administrator, registered office provider or share trustee or provides independent director services to such entity.

“Agent” means each of the Trustee, the Master Collateral Agent and the Depositary.

“Aggregate Reserve Account Required Balance” shall have the meaning set forth in the Collateral Agency and Accounts Agreement.

“Airport Authority” means any city or any public or private board or other body or organization chartered or otherwise established for the purpose of administering, operating or managing airports or related facilities, which in each case is an owner, administrator, operator or manager of one or more airports or related facilities.

“AmEx Co-Branded Agreement” means that certain Amended and Restated Co-Branded Credit Card Program Agreement, dated as of March 31, 2019, by and among American Express Travel Related Services Company, Inc., American Express National Bank and Delta.

“AmEx Membership Rewards Agreement” means that certain Amended and Restated Membership Rewards Agreement, dated as of March 31, 2019, by and among American Express Travel Related Services Company, Inc. and Delta.

“Anti-Corruption Laws” means all laws, rules and regulations of the United States applicable to Delta or its Subsidiaries from time to time intended to prevent or restrict bribery or corruption.

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

“Approved Independent Director List” means the list of no fewer than four (4) individuals that are eligible to act as an Independent Director for the SPV Parties pursuant to the Credit Agreement, which may be updated from time to time by the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) by providing written notice to the Issuers; provided that, with respect to the initial list and any updates thereto made by the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) thereafter, Loyalty Co may, upon providing thirty (30) days’ prior written notice to the Master Collateral Agent, reject up to two (2) listed individuals for any reason, and the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may thereafter amend the list to replace such individuals, provided further that in all cases, the Approved Independent Director List shall only include individuals who satisfy the Independent Director Criteria.
“Approved Replacement Independent Director” means, at any time, each individual listed on the Approved Independent Director List at such time; provided that if the ordinary shareholder(s) of an SPV Party reasonably disagrees that none of the individuals listed on the Approved Independent Director List (i) satisfy clause (c) in the definition of the Independent Director Criteria or (ii) are willing to act as Independent Director at a compensation level reasonably customary for directors of this type (it being agreed that the compensation level commensurate with that of the Independent Director the vacancy of which is being filled shall be deemed reasonably customary), then the ordinary shareholder(s) of the relevant SPV Party may appoint any other Person who meets the Independent Director Criteria as a replacement Independent Director.

“ARB Indebtedness” means, with respect to Delta or any of its Subsidiaries, without duplication, all Indebtedness or obligations of Delta or such Subsidiary created or arising with respect to any limited recourse revenue bonds issued for the purpose of financing or refinancing improvements to, or the construction or acquisition of, airport and other related facilities and equipment, the use or construction of which qualifies and renders interest on such bonds exempt from certain federal or state taxes.

“Available Funds” means, with respect to any Payment Date, the sum of (i) each Series of Notes’ Pro Rata Share of funds allocated pursuant to the Collateral Agency and Accounts Agreement for such Payment Date and transferred from the Collection Account to the Payment Account on or prior to such Payment Date, (ii) each Series of Notes’ Pro Rata Share of any amounts transferred to the Payment Account from the Reserve Account for application on such Payment Date and (iii) each Series of Notes’ Pro Rata Share of any other amount deposited into the Payment Account by or on behalf of any Issuer on or prior to such Payment Date.


“Bankruptcy Law” means the Bankruptcy Code or any similar federal, state or foreign law relating to reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other debtor relief, including, without limitation, Part V and sections 86-88 (inclusive) of the Companies Law (as amended) of the Cayman Islands and the Companies Winding Up Rules 2018 of the Cayman Islands, each as amended from time to time, and any bankruptcy, insolvency, winding up, reorganization or similar law enacted under the laws of the Cayman Islands or any other applicable jurisdiction.

“Board of Directors” means:

(1) with respect to a corporation or an exempted company, the board of directors of the corporation or exempted company, as applicable, or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;
with respect to a limited liability company, the managing member or members, manager or managers or any controlling committee of managing members or managers thereof; and

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

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or such other domestic city in which the Corporate Trust Office of the Trustee or Master Collateral Agent is located (in each case, as set forth in the Collateral Agency and Accounts Agreement, as such locations may be updated pursuant to the Collateral Agency and Accounts Agreement) are required or authorized to remain closed.

“Capital Markets Offering” means any offering of “securities” (as defined under the Securities Act) in (a) a public offering registered under the Securities Act, or (b) an offering not required to be registered under the Securities Act (including, without limitation, a private placement under Section 4(a)(2) of the Securities Act, an exempt offering pursuant to Rule 144A and/or Regulation S of the Securities Act and an offering of exempt securities).

“Cash Equivalents” means:

1. direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the federal government of the United States (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

2. direct obligations of state, provincial and local government entities, in each case maturing within one year from the date of acquisition thereof, which have, at the date of such acquisition, a rating of at least A- (or the equivalent thereof) from S&P, A3 (or the equivalent thereof) from Moody’s or A- (or the equivalent thereof) from Fitch;

3. obligations of domestic or foreign companies and their Subsidiaries, including, without limitation, bills, notes, bonds, debentures, and mortgage-backed securities, in each case maturing within one year from the date of acquisition thereof and which have, at the date of such acquisition, a rating of at least A- (or the equivalent thereof) from S&P, A3 (or the equivalent thereof) from Moody’s, or A- (or the equivalent thereof) from Fitch;

4. commercial paper maturing within 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-2 (or the equivalent thereof) from S&P or P-2 (or the equivalent thereof) from Moody’s, or F1 (or the equivalent thereof) from Fitch;

5. certificates of deposit, banker’s acceptances, banker’s discount notes, time deposits, US Dollar time deposits or overnight bank deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any other commercial bank of recognized standing organized under the laws of the United States or any state thereof or the District of Columbia that has a combined capital and surplus and undivided profits of not less than $100.0 million;
fully collateralized repurchase agreements with a term of not more than six (6) months for underlying securities that would otherwise be eligible for investment;

Investments in money in an investment company organized under the 40 Act, or in pooled accounts or funds offered through mutual funds, investment advisors, banks and brokerage houses which invest 95% of their assets in obligations of the type described in clauses (1) through (6) of this definition, including but not be limited to, money market funds or short-term and intermediate bonds funds;

money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the 40 Act or with the criteria set forth in National Instrument 81-102—Mutual Funds, as amended, (ii) are rated AAA (or the equivalent thereof) by S&P or Aaa (or the equivalent thereof) by Moody’s, or AAA (or the equivalent thereof) from Fitch and (iii) have portfolio assets of at least $500.0 million;

deposits available for withdrawal on demand with commercial banks organized in the United States having capital and surplus in excess of $100.0 million;

securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A- (or the equivalent thereof) from S&P, A3 (or the equivalent thereof) from Moody’s, or A- (or the equivalent thereof) from Fitch; and

any other securities or pools of securities that are classified under GAAP as cash equivalents or short-term investments on a balance sheet.

“Cayman Share Mortgage” means the equitable mortgage over shares in Loyalty Co, dated the Closing Date, between HoldCo 3 and the Master Collateral Agent.

“CFC” means “controlled foreign corporation” within the meaning of Section 957(a) of the Code; provided that no SPV Party shall be considered to be a CFC.

“Change of Control” means the occurrence of either an SPV Party Change of Control or a Parent Change of Control, as applicable.


“Closing Date” means the date of original issuance of the Notes.

“Collateral” means the assets and properties of the Grantors upon which Liens have been granted to the Master Collateral Agent or the Collateral Administrator to secure the Senior Secured Debt Obligations, including without limitation all of the “Collateral” as defined in the Collateral Documents, but excluding all such assets and properties released from such Liens pursuant to the applicable Collateral Document or otherwise constituting Excluded Property.

“Collateral Administrator” means U.S. Bank National Association, as collateral administrator under the Credit Agreement or, its permitted successors and assigns in such capacity.

“Collateral Agency and Accounts Agreement” means that certain Collateral Agency and Accounts Agreement dated as of the Closing Date, among the Issuers, each Grantor party thereto, the Depositary, the Collateral Administrator, the Trustee, each other Senior Secured Debt Representative from time to time party thereto and the Master Collateral Agent.

“Collateral Controlling Party” means (i) so long as the Term Loans are outstanding, the Master Collateral Agent acting as the Collateral Administrator (acting at the direction of the Administrative Agent or the required lenders under the Credit Agreement) and (ii) otherwise, the Master Collateral Agent, acting at the direction of the Required Debtholders.

“Collateral Documents” means, collectively, any Account Control Agreements, the Security Agreement, each IP Security Agreement, the Collateral Agency and Accounts Agreement, the Cayman Share Mortgage and other agreements, instruments or documents that create or purport to create a Lien in favor of the Master Collateral Agent or the Trustee for the benefit of the Senior Secured Parties, in each case, as may be amended and restated from time to time, and so long as such agreement, instrument or document shall not have been terminated in accordance with its terms.

“Collateral Sale” means the Disposition of any Collateral.

“Collection Account” means the account of Loyalty Co held at JPMorgan Chase Bank, N.A. with the account name “SkyMiles IP Ltd.” that is established and maintained at the New York office of JPMorgan Chase Bank, N.A. and under the control of the Master Collateral Agent pursuant to an Account Control Agreement.

“Collections” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Comparable Treasury Issue” means the United States Treasury security selected by the Quotation Agent as having an actual or interpolated maturity comparable to the remaining term of the 2025 Notes or 2028 Notes, as applicable, to be redeemed (the “Remaining Life”), that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Remaining Life.

“Comparable Treasury Price” means, with respect to any redemption date, the average of the Reference Treasury Dealer Quotations for such redemption date.

“Composite Marks” means the Intellectual Property set forth on a schedule to the Credit Agreement as being Composite Marks.
“Contingent Payment Event” means any indemnity, termination payment or liquidated damages under a SkyMiles Agreement, an IP Agreement or an Intercompany Agreement.

“Contribution Agreements” means each of the agreements set forth on a schedule to the Credit Agreement and each other contribution agreement, assignment or transfer entered into after the date hereof pursuant to which Delta contributes, assigns or transfers (i) all of Delta’s rights, title and interest in and to the SkyMiles Intellectual Property that it owns or purports to own, or later develops or acquires and owns (excluding the Composite Marks and the Specified Intellectual Property), (ii) all of Delta’s rights to establish, create, organize, initiate, participate, operate, assist, benefit from, promote or otherwise be involved in or associated with, in any capacity, the SkyMiles Program or any other customer loyalty miles program or any similar customer loyalty program (other than with respect to a Specified Minority Owned Program or a Permitted Acquisition Loyalty Program), and (iii) all of Delta’s rights, title and interest in, to and under the SkyMiles Agreements (other than the Intercompany Agreements), in each case, directly or indirectly to Loyalty Co.

“Corporate Trust Office” shall be at the address of the Trustee, specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Issuers.

“Credit Agreement” means the Term Loan Credit and Guaranty Agreement, dated as of the Closing Date, by and among the Issuers, the Guarantors, the lenders party thereto, the Administrative Agent, Goldman Sachs Lending Partners LLC and J.P. Morgan Chase Bank, N.A., and Morgan Stanley Senior Funding Inc. as joint lead arrangers and U.S. Bank National Association as collateral administrator.

“Currency” means miles, points and/or other units that are a medium of exchange used solely within a Loyalty Program.

“Data Protection Laws” means all laws, rules and regulations applicable to each applicable Issuer, Guarantor or Subsidiary thereof regarding privacy, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), processing, encryption, security, safeguarding, loss, disclosure and use of Personal Data (including Personal Data of employees, contractors, customers, loan applicants and third parties), On-line Tracking Data, and email and mobile communications, including any approvals or notices required in connection therewith.

“Dated SkyMiles Member Profile Data” means, as of any date, SkyMiles Member Profile Data set forth in clauses (d) and (e) of the definition thereof that was generated more than three (3) years before such date.

“Day Count Fraction” means the number of days elapsed in such period on a 30/360 basis.

“Deeds of Undertaking” means (i) the deed of undertaking to be entered into on or about the date hereof among Loyalty Co, HoldCo 3, the Master Collateral Agent and Walkers Fiduciary Limited, (ii) the deed of undertaking to be entered into on or about the date hereof among HoldCo 3, HoldCo 2, the Master Collateral Agent and Walkers Fiduciary Limited, (iii) the deed of undertaking to be entered into on or about the date hereof among HoldCo 2, HoldCo 1, the Master Collateral Agent and Walkers Fiduciary Limited and (iv) the deed of undertaking to be entered into on or about the date hereof among HoldCo 1, Delta, the Master Collateral Agent and Walkers Fiduciary Limited.
“Default” means any event that unless cured or waived, is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“Delta Case Milestones” means that, after the commencement or any institution of any proceeding under any Bankruptcy Law (the “Bankruptcy Case”) of Delta:

1. each Issuer Party shall continue to perform its respective obligations under the Notes Documents, the Term Loan Documents, the IP Agreements, the Intercompany Agreements, the Delta Intercompany Note and all Material SkyMiles Agreements to which such Issuer Party is party (collectively, the “Delta Agreements”) and there shall be no material interruption in the flow of funds under the Delta Agreements in accordance with the terms thereunder; provided, that (i) the performance by the Issuer Parties under this clause (1) shall in all respects be subject to any applicable materiality qualifiers, cure rights and/or grace periods provided for under the respective Delta Agreements, and (ii) the Issuer Parties shall have forty-five (45) days from the Petition Date (as defined below) to cure any failure to perform that requires court authorization to perform;

2. the debtors in respect of the Bankruptcy Case (the “Debtors”) shall file with the applicable U.S. bankruptcy court (the “Bankruptcy Court”), within fifteen (15) days of the date of petition in respect of the Bankruptcy Case (the “Petition Date”), a customary and reasonable motion to assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Issuer Party is party under section 365 of the Bankruptcy Code and continue to perform all obligations under all the Delta Agreements (the “Assumption Motion”), and shall thereafter pursue (including by contesting any objections to) the approval of the Assumption Motion;

3. the Bankruptcy Court shall have entered a customary and reasonable final order (the “Assumption Order”) granting the Assumption Motion, within sixty (60) days after the Petition Date, and such Assumption Order shall not be amended, stayed (unless the party seeking a stay has posted a cash bond pledged in favor of the Secured Parties and the secured parties in respect of any other Priority Lien Debt (the “Cash Bond”) in an amount equal to or greater than the maximum amount of the License Termination Payment (as defined in the Delta IP License) that could be asserted if the Delta IP License were to terminate (without reduction for any potential mitigation)), vacated, or reversed;
the parties agree and acknowledge that the Assumption Motion and Assumption Order shall be reasonable and customary and the Assumption Order shall provide, among other things, that: (i) the Debtors are authorized to assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Issuer Party is party and perform all obligations under the Delta Agreements and implement actions contemplated thereby and, pursuant to the Assumption Order will assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Issuer Party is party pursuant to section 365 of the Bankruptcy Code; (ii) the Delta Agreements are binding and enforceable against the parties thereto in accordance with their terms, without exception or amendment; (iii) any amounts payable under the Delta Agreements are actual and necessary costs and expenses of preserving the Debtors’ estates and shall be entitled to priority as an allowed administrative expenses of the Debtors pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code; (iv) the Debtors must cure any defaults under the Delta Agreements as a condition to assumption; and (v) the Debtors are authorized to take any action necessary to implement the terms of the Assumption Order;

(5) each of the Debtors and each other Issuer Party (i) shall not take any action to materially interfere with the assumption of or performance under the Delta Agreements, or support any other Person to take any such action; and (ii) shall take all steps commercially reasonably necessary, to contest any action that would materially interfere with the Delta Agreements, including, without limitation, litigating any objections and/or appeals;

(6) each of the Debtors and each other Issuer Party (i) shall not file any motion seeking to avoid, disallow, subordinate, or recharacterize any obligation under the Delta Agreements and (ii) shall take all steps commercially reasonably necessary, to contest any action that would seek to avoid, disallow, subordinate, or recharacterize any obligation under the Delta Agreements, including, without limitation, litigating any objections and/or appeals;

(7) in the event there is an appeal of the Assumption Order:

(a) if the appeal has not been dismissed within sixty (60) days, then (A) the Aggregate Reserve Account Required Balance shall increase by $15.0 million per month as long as such appeal is pending, up to a cap of $300.0 million, and (B) such additional amounts accrued pursuant to subclause (A) of this clause (7) shall be released to Delta within five (5) Business Days after the end of such appeal; and

(b) the Debtors shall pursue a court order requiring any appellants to post a Cash Bond in an amount equal to or greater than the maximum amount of the License Termination Payment (as defined in the Delta IP License) that could be asserted if the Delta IP License were to terminate (without reduction for any potential mitigation), to an account held solely for the sole benefit of the Senior Secured Parties and the secured parties in respect of any other Priority Lien Debt;

(8) the Bankruptcy Case shall not, and is not converted into, a case under chapter 7 of the Bankruptcy Code; and
any plan of reorganization filed or supported by any Debtor shall expressly provide for assumption or reinstatement, as applicable, of all of the Delta Agreements and reinstatement or replacement of each of the related obligations and/or guarantees, subject to applicable cure periods.

For the avoidance of doubt, notwithstanding the foregoing, during the pendency of and following any stay or appeal of the Assumption Order, each Issuer Party must continue to perform all obligations under the Delta Agreements, including making any and all payments under the Delta Agreements in accordance with the terms thereof and as described above and, in the event of any such payment default (subject to any applicable cure or grace periods under the applicable Delta Agreements), nothing shall limit any of the Holders’ rights and remedies including but not limited to any termination rights under the Delta Agreements.

“Delta Intellectual Property” means any and all Intellectual Property used in connection with the operation of the Delta airline business that, even if used in connection with the SkyMiles Program, would be required or necessary to operate the Delta airline business in the absence of a Loyalty Program, including the following Intellectual Property: (a) the DELTA and DELTA AIR LINES marks and DAL as a stock symbol, together with any translations, logos or designs for the foregoing; (b) the delta.com domain name registration and website (including all content and source code that is not otherwise SkyMiles Intellectual Property) and Delta’s social media accounts; and (c) the Delta mobile app.

“Delta Intercompany Loan” means one or more loans made by HoldCo 2 to Delta pursuant to the Delta Intercompany Note with the proceeds of the Term Loans and the Notes issued under this Indenture on or around the Closing Date that have been distributed to HoldCo 2.

“Delta Intercompany Note” means the promissory note(s) evidencing the Delta Intercompany Loan.

“Delta IP License” means that certain Intellectual Property Sublicense Agreement between HoldCo 3, as licensor, and Delta, as licensee, to be dated on or about the Closing Date.

“Delta Traveler Related Data” means (a) data generated, produced or acquired as a result of the issuance, modification or cancellation of customer tickets from Delta or for flights on Delta, including data in or derived from “Passenger Name Records” (including name and contact information) associated with flights on Delta, (b) payment-related information, (c) customer login to the delta.com website or any successor website and (d) a customer’s flight-related experience, but excluding in the case of clause (a) information that would not be generated, produced or acquired in the absence of a Loyalty Program. The parties acknowledge and agree that customer name, contact information (including name, mailing address, email address, and phone numbers), SkyMiles ID number or login and communication and promotion opt-ins (as described in clause (b) of the definition of “SkyMiles Member Profile Data”) (to the extent that such communication and promotion opt-ins are not specific to the SkyMiles Program) are included in both SkyMiles Customer Data and Delta Traveler Related Data (it being understood that Delta shall be entitled to continue marketing its airline business in the ordinary course).

“Deposit Account” has the meaning given to it in the UCC.
“Depositary” means U.S. Bank National Association in its capacity as Depositary under the Term Loan Documents.

“Determination Date” means, with respect to any Quarterly Reporting Period, the Payment Date occurring in the immediately succeeding fiscal quarter, unless an Early Amortization Period is in effect as of the last day of such Quarterly Reporting Period, in which case it shall mean the third Business Day preceding such Payment Date.

“Director Services Agreements” means (i) the director and share trustee services agreement dated on or about the Closing Date among Delta, Loyalty Co and Walkers Fiduciary Limited, (ii) the director services agreement dated on or about the Closing Date among Loyalty Co, the Loan Party Director (as defined therein) party thereto and Delta, (iii) the director services agreement dated on or about the Closing Date among HoldCo 3, the Issuer Party Director (as defined therein) party thereto and Loyalty Co, (iv) the director services agreement dated on or about the Closing Date among HoldCo 2, the Loan Party Director (as defined therein) party thereto and Loyalty Co, and (v) the director services agreement dated on or about the Closing Date among HoldCo 1, the Loan Party Director (as defined therein) and Loyalty Co.

“Discharge of Senior Secured Debt Obligations” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Disposition” means, with respect to any property, any sale, lease, sale and leaseback, conveyance, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“DTC” means The Depository Trust Company.

“Early Amortization Cure” shall be deemed to occur on, (a) in the case of an Early Amortization Event that arises under Section 6.01(a)(i), the earlier of (i) the date Cure Amounts related to the Early Amortization Event have been deposited to the Collection Account and (ii) the first day of the Quarterly Reporting Period following the Quarterly Reporting Period related to the Determination Date on which the Peak Debt Service Coverage Ratio has been satisfied for two consecutive Determination Dates following the Determination Date on which the Early Amortization Event was triggered, (b) in the case of an Early Amortization Event that arises under Section 6.01(a)(ii), the date on which the balance in the Reserve Account is at least equal to the Aggregate Reserve Account Required Balance, and (c) in the case of an Early Amortization Event that arises under Section 6.01(a)(iii) or Section 6.01(a)(iv), the date that no Event of Default under this Indenture or “Early Amortization Event” under this Indenture or other Senior Secured Debt Document, as applicable, shall exist or be continuing.

“Early Amortization Payment” means, with respect to any Payment Date, if an the Early Amortization Period was in effect as the last day of the Related Quarterly Reporting Period, an amount equal to the lesser of

(i) 50% of the excess of

(A) the Pro Rata Share of the sum of (i) the aggregate amount of Collections received in the Collection Account during such Quarterly Reporting Period minus (2) if such Early Amortization Period was not in effect on the first day of such Quarterly Reporting Period, the aggregate amount of Collections received in the Collection Account during such Quarterly Reporting Period prior to the first day of such Early Amortization Period plus (3) any Cure Amounts attributable to such Quarterly Reporting Period deposited in the Collection Account or prior to the related Determination Date,
(B) the amount as most recently estimated by Delta to be distributed pursuant to clauses (a) through (h) of Section 4.01 on the related Payment Date;
and

(ii) the amount necessary to pay the outstanding principal balance of the Notes (and accrued interest thereon) in full.

“Early Amortization Period” means the period commencing on the occurrence of an Early Amortization Event, and ending on the earlier of (a) the date (if any) on which the Early Amortization Cure is consummated and (b) the date all Obligations (other than contingent obligations not due and owing) have been paid in full in cash.

“Equity Interests” means shares, shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person (whether direct or indirect), share capital in an exempted company and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“Escrow Accounts” means accounts of Delta or any Subsidiary, solely to the extent any such accounts hold funds set aside by Delta or such Subsidiary to manage the collection and payment of amounts collected, withheld or incurred by Delta or such Subsidiary for the benefit of third parties relating to: (a) federal income tax withholding and backup withholding tax, employment taxes, transportation excise taxes and security related charges; (b) any and all state and local income tax withholding, employment taxes and related charges and fees and similar taxes, charges and fees, including, but not limited to, state and local payroll withholding taxes, unemployment and supplemental unemployment taxes, disability taxes, workman’s or workers’ compensation charges and related charges and fees; (c) state and local taxes imposed on overall gross receipts, sales and use taxes, fuel excise taxes and hotel occupancy taxes; (d) passenger facility fees and charges collected on behalf of and owed to various administrators, institutions, authorities, agencies and entities; (e) other similar federal, state or local taxes, charges and fees (including without limitation any amount required to be withheld or collected under applicable law); (f) other funds held in trust for, or otherwise pledged to or segregated for the benefit of, an identified beneficiary; or (g) accounts, capitalized interest accounts, debt service reserve accounts, escrow accounts and other similar accounts or funds established in connection with the ARB Indebtedness.
“Euroclear” means Euroclear Bank SA/NV and its successors, as operator of the Euroclear System.


“Exchange Rate” means, on any day, the rate at which the currency other than the Required Currency may be exchanged into the Required Currency at approximately 11:00 a.m., New York City time, on such date on the Bloomberg Key Cross Currency Rates Page for the relevant currency. To the extent that such rate does not appear on any Bloomberg Key Cross Currency Rate Page, the Exchange Rate shall be determined by Delta in good faith.

“Excluded Intellectual Property” means all (a) Intellectual Property other than the SkyMiles Intellectual Property and (b) Delta Traveler Related Data.

“Excluded Property” means, collectively, (i) any lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement, and any of its rights or interest thereunder or any property subject thereto, if and to the extent (but only to the extent) that a security interest: (A) is prohibited by or in violation of any law, rule or regulation applicable to such Grantor, (B) would (x) result in a breach of the terms of, or constitute a default under, such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement unless and until any required consent shall have been obtained (provided that except with respect to (i) SkyMiles Agreements in effect on the Closing Date and (ii) SkyMiles Agreements that are not reasonably expected to produce $25.0 million or more in revenue individually and $100 million or more in the aggregate, each Grantor shall use commercially reasonable efforts to obtain such required consent) or (y) give any other party to such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement the right to terminate its obligations thereunder pursuant to a valid and enforceable provision, or (C) is expressly permitted under such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement only with consent of the parties thereto (other than consent of a Grantor) and such necessary consents to such grant of a security interest have not been obtained, it being understood and agreed that, except with respect to (i) SkyMiles Agreements in effect on the Closing Date and (ii) SkyMiles Agreements that are not reasonably expected to produce $25.0 million or more in revenue individually or more in the aggregate, each Grantor shall use commercially reasonable efforts to obtain such required consent but there shall not otherwise be an obligation to obtain such consents to permit the security interests contemplated hereby, in each case of the foregoing clauses (A) through (C) unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest under the Collateral Documents pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other Requirement of Law (including the Bankruptcy Code) or principles of equity; provided, however, that the Collateral shall include (and such security interest shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement not subject to the prohibitions specified in the foregoing clauses (A) through (C) above and such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement was not entered into in contemplation of circumventing any Grantor’s obligation to grant a security interest under the Collateral Documents, (i) any “intent to use” trademark applications for which a statement of use has not been filed with and accepted by the United States Patent and Trademark Office (but only until such statement is filed and accepted), (ii) cash of Loyalty Co that is the subject of a deposit or pledge constituting a Permitted Lien and that is earmarked to be used to satisfy or discharge Senior Secured Debt Obligations under this Indenture or (iii) any Excluded Intellectual Property, (iv) those assets as to which the Master Collateral Agent, acting at the direction of the Collateral Controlling Party, and Grantors reasonably agree that the cost of obtaining a security interest is excessive in relation to the benefit to the Senior Secured Parties of the security to be afforded thereby, (v) any assets and any equity interests in excess of 65% of voting equity interests of any CFC or FSHCO and (vi) any taxes paid to Loyalty Co or its agent which it collects for or on behalf of any Governmental Authority; provided that (1) “Excluded Property” shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property) and (2) in the case of any lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement to which any Grantor is a party, and any of its rights or interest thereunder or any property subject thereto (including any general intangibles), if and to the extent (but only to the extent) that a security interest therein to be granted by such Grantor would (a) result in a breach of the terms of, or constitute a default under, such lease, license, instrument, charter, permit, franchise, authorization, contract or other agreement unless and until any required consent of any Grantor shall have been obtained or (b) give any other Grantor party to such lease, license, instrument, charter, permit, franchise, authorization, contract or other document the right to terminate its obligations thereunder, each such Grantor hereby agrees that its consent to such security interest is hereby provided and any such right to terminate such obligations is hereby waived, in each case in connection with the security interests granted hereby (and such Grantor agrees that such property shall not constitute Excluded Property).
“Fair Market Value” means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by an officer of Delta (unless otherwise provided in this Indenture); provided that any such officer of Delta shall be permitted to consider the circumstances existing at such time (including, without limitation, economic or other conditions affecting the United States airline industry generally and any relevant legal compulsion, judicial proceeding or administrative order or the possibility thereof) in determining such Fair Market Value in connection with such transaction.

“Fees” means (i) to the Trustee, the fees set forth in the fee letter between the Trustee and the Issuers, and (ii) to the Collateral Administrator and the Master Collateral Agent, the fees set forth in the Collateral Administrator and Master Collateral Agent Fee Letter, among the Collateral Administrator, the Master Collateral Agent and the Issuers, in each case at the times set forth therein.

“Finance Lease Obligation” means, as applied to any Person, an obligation that is required to be accounted for as a finance or capital lease (and not an operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a finance or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“Fitch” means Fitch Ratings, Inc., also known as Fitch Ratings, and its successors.

“FSHCO” means any Subsidiary substantially all the assets of which consist of equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in one or more (a) CFCs and/or (b) other Subsidiaries substantially all the assets of which consist (directly or indirectly) of equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in one or more CFCs; provided that no SPV Party shall be considered to be a FSHCO.

“GAAP” means generally accepted accounting principles in the United States, which are in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, statements and pronouncements of the Financial Accounting Standards Board, such other statements by such other entity as have been approved by a significant segment of the accounting profession and the rules and regulations of the SEC governing the inclusion of financial statements in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.
“Global Note Legend” means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case, issued in accordance with Section 2.01, Section 2.06(b) or Section 2.06(d) hereof.

“Government Securities” means securities that are:

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

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

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank organization, or other entity exercising executive, legislative, judicial, taxing or regulatory powers or functions of or pertaining to government. Governmental Authority shall not include any Person in its capacity as an Airport Authority.

“Grantor” means each Issuer and Guarantor that shall at any time pledge Collateral under a Collateral Document. For the avoidance of doubt, Delta shall not be a Grantor.
“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include (i) endorsements for collection or deposits or (ii) customary contractual indemnities in commercial agreements, in each case in the ordinary course of business and consistent with past practice. The amount of any obligation relating to a Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made (or, if less, the maximum reasonably anticipated liability for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform) as determined by the guarantor in good faith.

“Guarantors” means, collectively, HoldCo 1, Holdco 2 and Holdco 3.

“HoldCo 1” means SkyMiles Holdings Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo 2” means SkyMiles IP Holdings Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo 3” means SkyMiles IP Finance Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo IP License” means that certain Intellectual Property License Agreement between Loyalty Co, as licensor, and HoldCo 3, as licensee, dated on or about the Closing Date.

“Holder” means the Person in whose name a Note is registered on the Registrar’s books, which shall initially be the respective nominee of DTC.
“Incremental Priority Amount” means, at any time, (a) if Delta has (1) completed the merger and consolidation of a Loyalty Program of a Specified Acquisition Entity or one of its Subsidiaries or of an entity principally associated with such Specified Acquisition Entity or any of its Subsidiaries (a “Specified Loyalty Program”) into the SkyMiles Program and (2) to the extent not effected pursuant to clause (1), caused such Specified Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees), accounts in which such cash revenue is deposited, Intellectual Property and member data (but solely to the extent that such Intellectual Property and member data would be included in the definition of SkyMiles Intellectual Property, substituting references to the SkyMiles Program with references to such other Specified Loyalty Program) and material third-party contracts and intercompany agreements related to such Specified Loyalty Program to be pledged as Collateral (except to the extent constituting Excluded Property), subject to third-party rights, applicable law and other Permitted Liens, an amount equal to the excess of (i) 1.4 multiplied by the aggregate amount of Transaction Revenue for the most recently completed four Quarterly Reporting Periods over (ii) $9.0 billion and otherwise (b) zero.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money (including in connection with deposits or advances), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accrued expenses incurred and current accounts payable, in each case in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) Finance Lease Obligations, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor 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 that such Person is not liable therefor.

“Indenture” means this Indenture, as amended or supplemented from time to time.

“Independent Director” means, at any time with respect to any SPV Party, a director of such SPV Party that (1)(a) is appointed as Independent Director on the Closing Date and satisfies the Independent Director Criteria at such time or (b) is an Approved Replacement Independent Director that has been selected by the ordinary shareholder(s) of such SPV Party and (2) is a duly appointed “Independent Director” under and as defined in the constitutional documents of such SPV Party.

“Independent Director Criteria” means criteria that shall be satisfied only in respect of a natural person that (a) is a director who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience; (b) either is approved by both Delta and the Administrative Agent or is provided by a company nationally recognized in the United States or the Cayman Islands for providing professional independent managers, that is not an Affiliate of any Issuer or Guarantor or the Master Collateral Agent and that provides professional independent managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director; and (c) is not, and has never been, and will not while serving as Independent Director be, any of the following: (i) a member, partner, equityholder, manager, director, officer or employee of Loyalty Co or any of its equityholders, the Master Collateral Agent or any Affiliates of the foregoing (other than (A) equity ownership in Delta which (x) constitutes an immaterial amount of Delta Stock and (y) is not material to the net worth of such Independent Director or (B) as an Independent Director of any SPV Party or any other Affiliate of Loyalty Co that is required by a creditor to be a single purpose bankruptcy-remote entity, provided that such Person either is approved by the Administrative Agent or is employed by a company that routinely provides professional independent managers or directors); (ii) a creditor, supplier or service provider (including provider of professional services) to Loyalty Co, the Master Collateral Agent or any of their respective equityholders or Affiliates (other than a nationally recognized company that routinely provides professional independent managers and other corporate services to Loyalty Co, the Master Collateral Agent or any of their respective equityholders or Affiliates in the ordinary course of business); (iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or (iv) a Person that controls (whether directly, indirectly or otherwise) any of clause (i), (ii) or (iii) above.
“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Initial Purchasers” means the persons named as initial purchasers in the Purchase Agreement, dated as of September 16, 2020.

“Insolvency or Liquidation Proceeding” means:

(a) any case commenced by or against any Issuer or Guarantor under the Bankruptcy Code or any similar foreign, federal or state law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of such Issuer or Guarantor, any receivership or assignment for the benefit of creditors relating to such Issuer or Guarantor or any similar case or proceeding relative to such Issuer or Guarantor or its creditors, as such, in each case whether or not voluntary;

(b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to an Issuer or Guarantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(c) any other proceeding of any type or nature in which substantially all claims of creditors of an Issuer or Guarantor are determined and any payment or distribution is or may be made on account of such claims.

“Intellectual Property” means all issued patents and patent applications, registered trademarks or service marks and applications to register any trademarks or service marks, brand names, trade dress, registered copyrights and applications for registration of copyrights, Trade Secrets, domain names, social media accounts and other intellectual property, whether registered or unregistered, including unregistered copyrights in software and source code and applications to register any of the foregoing.

“Intercompany Agreements” means all currently existing or future agreements between Delta and its Subsidiaries governing (a) the sale, transfer or redemption of Miles, or (b) the provision of services by Delta or any of its Subsidiaries to Loyalty Co in connection with the SkyMiles Program including: the Intercompany Agreement dated as of the Closing Date, between Delta and Loyalty Co.
“**Intercreditor Agreements**” means each of the Junior Lien Intercreditor Agreement and the Collateral Agency and Accounts Agreement.

“**Interest Distribution Amount**” means, with respect to each Payment Date, the sum of the amount equal to (a) the product of (i) the Interest Rate for the related Interest Period, multiplied by (ii) the Day Count Fraction, and multiplied by (iii) the outstanding principal amount of the Notes as of the first day of the related Interest Period, plus (b) any unpaid Interest Distribution Amounts in respect thereof from prior Payment Dates plus, to the extent permitted by law, interest thereon at the applicable Interest Rate for the related Interest Period.

“**Interest Period**” means, for each Payment Date, the period from and including thePayment Date immediately preceding such Payment Date (or, with respect to the initial Payment Date, the Closing Date) to but excluding such Payment Date.

“**Interest Rate**” means 4.500% per annum with respect to the 2025 Notes and 4.750% per annum with respect to the 2028 Notes, in each case plus, if applicable pursuant to Section 2.12, interest, to the extent permitted by law, on all overdue amounts up to (but not including) the date of actual payment (after as well as before judgment) at a rate equal to the rate then applicable plus 2.0%.

“**Investment Grade**” means a rating of BBB- or better by Fitch (or its equivalent under any successor rating category of Fitch); a rating of Baa3 or better by Moody’s (or its equivalent under any successor rating category of Moody’s); and a rating of BBB- or better by S&P (or its equivalent under any successor rating category of S&P).

“**Investments**” means, with respect to any Person, all direct or indirect investments made from and after the Closing Date by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees), capital contributions or advances (but excluding advance payments and deposits for goods and services and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities of other Persons, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The acquisition by Delta after the Closing Date of a Person that holds an Investment in a third Person will be deemed to be an Investment by Delta in such third Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

“**IP Agreements**” means (a) the Contribution Agreements, (b) the IP Licenses, (c) the IP Management Agreement and (d) each other contribution agreement, license or sublicense related to the SkyMiles Intellectual Property that is required to be entered into after the Closing Date pursuant to the terms of the Term Loan Documents and mutually specified as an “IP Agreement”.

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“IP Licenses” means (a) the HoldCo IP License and (b) the Delta IP License.

“IP Management Agreement” means that certain Management Agreement among Loyalty Co, HoldCo 3, IP Manager and the Master Collateral Agent pursuant to which the IP Manager will provide certain services to Loyalty Co and HoldCo 3 with respect to SkyMiles Intellectual Property.

“IP Manager” means Delta (or any of its affiliates to the extent a permitted successor or assign) in its capacity as IP Manager under the IP Management Agreement, or any Successor Manager (as such term is defined under the IP Management Agreement).

“IP Security Agreements” shall have the meaning set forth in the Security Agreement.

“Issuer Order” means a written request or order signed on behalf of each Issuer by an Officer of such Issuers and delivered to the Trustee.

“Issuer Parties” means the Issuers and the Guarantors.

“Issuers” has the meaning set forth in the preamble hereto until a successor replaces the applicable entity in accordance with the applicable provisions of this Indenture and, thereafter, includes such successor.

“Junior Lien Debt” means, any Indebtedness owed to any other Person, so long as (i) such Indebtedness is expressly subordinated in right of payment to the Notes and any other Senior Secured Debt Obligations in the agreement, indenture or other instrument governing such Indebtedness and in a Junior Lien Intercreditor Agreement, (ii) the Liens on the Collateral securing such Indebtedness are subordinated to the Liens on the Collateral securing the Notes and any other Senior Secured Debt Obligations pursuant to a Junior Lien Intercreditor Agreement, (iii) the Weighted Average Life to Maturity of such Indebtedness shall be no shorter than the remaining Weighted Average Life to Maturity of the Notes, (iv) the maturity date for such Indebtedness shall be at least 91 days after the Latest Maturity Date, and (v) the terms and conditions governing such Indebtedness of the Issuers Parties shall (a) be reasonably acceptable to any Senior Secured Debt Representative or (b) not be materially more restrictive, when taken as a whole, on the SPV Parties (as determined in good faith by Loyalty Co), than the terms of the then-outstanding Notes (except for (x) terms that are conformed (or added) for the benefit of the Holders holding then-outstanding Notes pursuant to an amendment hereto or thereto subject solely to the reasonable satisfaction of Loyalty Co and the Trustee, (y) covenants, events of default and guarantees applicable only to periods after the Latest Maturity Date (as of the date of the incurrence of such Junior Lien Debt) and (z) pricing, fees, rate floors, premiums, optional repurchase or redemption terms) unless the Holders under the then-outstanding Notes, receive the benefit of such more restrictive terms; provided that (i) in no event shall such Indebtedness be subject to events of default, mandatory repurchase or prepayment or acceleration resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the Notes and (ii) any such Indebtedness shall include separateness provisions regarding each SPV Party substantially similar to the provisions set forth in Section 4.08.
“Junior Lien Debt Documents” means any documents, instruments, notes, credit agreements, purchase agreements or other agreements entered into in connection with the incurrence or issuance of any Junior Lien Debt.

“Junior Lien Intercreditor Agreement” means an intercreditor and subordination agreement among the Master Collateral Agent, the Grantors party thereto, the Collateral Administrator, the Trustee and the other representatives party thereto, including the representative of the holders of Junior Lien Debt, and substantially in the form attached as an exhibit to the Collateral Agency and Accounts Agreement with such necessary changes (so long as no such change is adverse to the interests of the Senior Secured Parties) approved by the Collateral Controlling Party.

“Latest Maturity Date” means, at any date of determination, the latest maturity date of any Priority Lien Debt.

“Lien” means (a) any mortgage, deed of trust, pledge, deed to secure debt, hypothecation, security interest, easement (including, without limitation, reciprocal easement agreements and utility agreements), rights-of-ways, reservations, encroachments, zoning and other land use restrictions, claim or any other title defect, lease, encumbrance, restriction, lien or charge of any kind whatsoever and (b) the interest of a vendor or a lessor under any conditional sale, capital lease or other title retention agreement (or any Finance Lease Obligations having substantially the same economic effect as any of the foregoing, but in any event not in respect of any Non-Finance Lease Obligations).

“Loyalty Program” means any customer loyalty program available to individuals (i.e., natural persons) that grants members in such program Currency based on a member’s purchasing behavior and that allows a member to accrue and redeem such Currency for a benefit or reward, including flights and/or other goods and services.

“Master Collateral Agent” means U.S. Bank National Association, in its capacity as master collateral agent for the Senior Secured Parties under the Collateral Agency and Accounts Agreement.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations or financial condition of Delta and its Subsidiaries, taken as a whole, (b) the validity or enforceability of any Notes Document or the rights or remedies of the Secured Parties, (c) the ability of Loyalty Co to pay the Obligations, (d) the validity, enforceability or collectability of the Material SkyMiles Agreements, the IP Licenses or the Contribution Agreements generally or any material portion of the Material SkyMiles Agreements, the IP Licenses or the Contribution Agreements, taken as a whole, (e) the business and operations of the SkyMiles Program or (f) the ability of the Issuer Parties to perform their material obligations under the IP Agreements, the Delta Intercompany Loan, or the Material SkyMiles Agreements to which it is a party; provided, that no condition or event that has been disclosed in the public filings for Delta on or prior to the Closing Date shall be considered a “Material Adverse Effect” under this Indenture.
“Material Indebtedness” means Indebtedness of any Issuer or Guarantor (other than the Notes) outstanding under the same agreement in a principal amount exceeding $200 million.

“Material Modification” means:

1. any amendment or waiver of, or modification or supplement to, a Material SkyMiles Agreement (other than the Intercompany Agreements) executed or effected on or after the Closing Date which: (a) extends, waives, delays or contractually or structurally subordinates one or more payments due to any Issuer Party with respect to such Material SkyMiles Agreement; (b) reduces the rate or amount of payments due to any Issuer Party with respect to such Material SkyMiles Agreement; (c) gives any Person other than Issuer Parties party to such Material SkyMiles Agreement additional or improved termination rights with respect to such Material SkyMiles Agreement; (d) shortens the term of such Material SkyMiles Agreement or expands or improves any counterparty’s rights or remedies following a termination; or (e) imposes new financial obligations on any Issuer Party under such Material SkyMiles Agreement, in each case, to the extent such amendment, waiver, modification or other supplement would reasonably be expected to result in a Payment Material Adverse Effect; and

2. any amendment or waiver of, or modification or supplement to, an Intercompany Agreement or the Delta Intercompany Loan which: (a) sets or shortens the scheduled maturity or term of the Intercompany Agreements to a date earlier than the Latest Maturity Date then in effect, (b) (i) sets or shortens the scheduled maturity of the Delta Intercompany Loan to a date earlier than the Latest Maturity Date then in effect, (ii) changes the ability of Delta to repay the Delta Intercompany Loan or the payee under the Delta Intercompany Loan to demand payment in a manner that would result in the outstanding principal amount of the Delta Intercompany Loan held by HoldCo 2 to be less than the aggregate outstanding principal amount of the Senior Secured Debt outstanding, (iii) changes the ability of Delta to repay the Delta Intercompany Loan or the payee under the Delta Intercompany Loan to demand payment in a manner that would result in the outstanding principal amount of the Delta Intercompany Loan held by HoldCo 2 to be less than the aggregate outstanding principal amount of the Senior Secured Debt outstanding (c) amends, modifies or otherwise changes the EBITDA Margin for Miles payments payable by Delta to Loyalty Co as specified in Section 3.3 of the Intercompany Agreement (including changes to the definitions of “EBITDA Margin” and “Excluded Miles” in the Intercompany Agreement or Exhibit 1 to the Intercompany Agreement) in a manner reducing the amount payable to Loyalty Co or reduces the frequency of payments under the Intercompany Agreements to be less frequent than monthly, (d) amends, modifies or otherwise changes the calculation or rate of fees, expenses or termination payments due and owing under the Intercompany Agreements except to the extent addressed in clause (c) above, in a manner reducing the amount owed to Loyalty Co, (e) changes the contractual subordination of payments thereunder, in a manner materially adverse to the holders of the notes, (f) changes the ability for the Master Collateral Agent to demand payment under the Delta Intercompany Loan, (g) permits payments due to Loyalty Co to be deposited to an account other than the Collection Account, (h) changes the amendment standards applicable to such agreement (other than changes affecting rights of the Trustee or the Master Collateral Agent to consent to amendments, which is covered by clause (i)), (i) materially impairs the rights of the Trustee or the Master Collateral Agent to enforce or consent to amendments to any provisions of any such agreement in accordance therewith, (j) changes Section 2.3 of the Intercompany Agreement such that Loyalty Co no longer has the exclusive right to issue and create Miles or (k) amends, modifies or otherwise changes Section 2.1 of the Intercompany Agreement in any manner that adversely affects Loyalty Co’s ability to perform its obligations under the SkyMiles Agreements or any other agreement related to the SkyMiles Program, and in the case of clauses (c), (d), (f) and (h) if the amendment, waiver, modification or supplement would reasonably be expected to cause a Payment Material Adverse Effect (provided that in the case of clause (c), any change to the 20% EBITDA Margin or to the inclusion of redemption cost or operating expense in EBITDA Margin will not be subject to a Payment Material Adverse Effect qualification).
Notwithstanding anything to the contrary in this definition, the entrance into a Permitted Replacement SkyMiles Agreement shall not constitute a Material Modification.

“Material SkyMiles Agreements” means (a) each Intercompany Agreement, (b) the AmEx Co-Branded Agreement, (c) the AmEx Membership Rewards Agreement, (d) each Permitted Replacement SkyMiles Agreement, and (e) as of any date, each other SkyMiles Agreement that generated Transaction Revenues equal to 10% or more of Transaction Revenues from SkyMiles Agreements received over the twelve months prior to such date, in each case, as amended, restated, supplemented, or otherwise modified from time to time as permitted by the Notes Documents.

“Maximum Quarterly Debt Service” means, for any Determination Date, an amount equal to the sum of:

1. the Maximum Amortization Amount at such time;
2. the Interest Distribution Amount that is or will be due on the related Payment Date; and
3. the sum of the “Interest Distribution Amounts” (as such term, or such similar or analogous term, is defined in the applicable Senior Secured Debt Documents) that are or will be due on the related Payment Date for each Series of Senior Secured Debt (other than the Notes).

“Maximum Amortization Amount” means, as of any day of determination, an amount equal to the greatest Senior Secured Amortization Amount for any Payment Date occurring on or after such day of determination until (and including) to the Latest Maturity Date at such time.

“Miles” means the Currency under the SkyMiles Program.

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

“Net Proceeds” means (a) with respect to any Collateral Sale, Recovery Event or Contingent Payment Event, the aggregate cash proceeds and Cash Equivalents received by Delta or any of its Subsidiaries in respect thereof, net of: (i) the direct costs and expenses relating to such Collateral Sale, Recovery Event or Contingent Payment Event, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Collateral Sale, Recovery Event or Contingent Payment Event, taxes paid or payable as a result of the Collateral Sale, Recovery Event or Contingent Payment Event, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements; and (ii) any reserve for adjustment or indemnification obligations in respect of the sale price of such asset or assets established in accordance with GAAP; and (b) with respect to any issuance or incurrence of Indebtedness (including Indebtedness under the Credit Agreement or Permitted Pre-paid Miles Purchases), the cash proceeds thereof, net of (i) any fees, underwriting discounts and commissions, premiums, and other costs and expenses incurred in connection with such issuance and (ii) attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses, and brokerage, consultant, accountant, and other customary fees.
“Non-Control Investment” means an investment in an airline in which Delta does not possess, directly or indirectly, (a) more than 50% of the voting power of the ownership interests of such airline or the entity that operates any Loyalty Program thereof or (b) the ability to appoint a majority of the members of the Board of Directors (or equivalent governing body) of such airline or the entity that operates the loyalty program thereof.

“Non-Finance Lease Obligations” means a lease obligation that is not required to be accounted for as a finance or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. An operating lease shall be considered a Non-Finance Lease Obligation.

“Notes” means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term “Notes” shall also include any Additional Notes that may be issued under a supplemental indenture.

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

“Notes Documents” means this Indenture, the Collateral Documents, any supplemental indentures and any other instrument or agreement (which is designated as a Notes Document therein) executed and delivered by any Issuer or any Guarantor to the Trustee or the Master Collateral Agent.

“Obligations” means the unpaid principal of and interest on (including interest accruing after the maturity of the Notes and interest accruing after the filing of any petition of bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Issuer, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Notes and all other obligations and liabilities of the Issuers to any Agent or any Holder, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which arise under this Indenture or Collateral Documents, whether on account of principal, interest, reimbursement obligations, fees, indemnities, out-of-pocket costs, and expenses (including all fees, charges and disbursements of counsel to any Agent or any Holder that are required to be paid by the Issuers pursuant hereto or under any other Collateral Document) or otherwise.
“Offering Memorandum” means the Offering Memorandum, dated September 16, 2020 relating to the offering of the Notes.

“Officer” means, (i) with respect to any SPV Party, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Director, any Manager, any Managing Member or any Vice-President of such Person and (ii) with respect to Delta, the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, vice president, controller, chief accounting officer, secretary or assistant secretary of Delta, but in any event, with respect to financial matters, the chief financial officer, treasurer, assistant treasurer, controller or chief accounting officer of Delta.

“Officer’s Certificate” means a certificate signed on behalf of an Issuer (or such other applicable Person) by a Responsible Officer of an Issuer (or such other applicable Person), respectively.

“On-line Tracking Data” means any information or data collected in relation to on-line activities that can reasonably be associated with a particular user or computer or other device.

“Opinion of Counsel” means a written opinion from legal counsel. Such counsel may be an employee of or counsel to the Issuer Parties.

“Parent Bankruptcy Event” means (a) Delta (i) commences a voluntary case or procedure under any Bankruptcy Law or (ii) consents to the entry of an order for relief against it in an involuntary case or (b) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Delta, (ii) appoints a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of Delta or for all or substantially all of the property of Delta, or (iii) orders the liquidation of Delta, and in each case under clause (b) of this definition, the order or decree remains unstayed and in effect for sixty (60) consecutive days.

“Parent Change of Control” means the occurrence of any of the following:

(a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Delta and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act), other than any such transaction where the holders of Delta’s Voting Stock immediately before that transaction own, directly or indirectly, not less than a majority of the Voting Stock of the transferee, or the parent thereof, immediately after such transaction and in substantially the same proportion as their ownership in Delta before the transaction;

(b) the adoption of a plan relating to the liquidation or dissolution of Delta; and
consummation of any transaction (including without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than Delta or its subsidiaries, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the combined voting power of Delta’s Voting Stock or other Voting Stock into which Delta’s Voting Stock is reclassified, consolidated, exchanged, or changed measured by voting power rather than number of shares, other than any such transaction where:

(i) Delta’s outstanding Voting Stock is reclassified, consolidated, exchanged, or changed for other Voting Stock of Delta or for Voting Stock of the surviving corporation, and

(ii) the holders of Delta’s Voting Stock immediately before that transaction own, directly or indirectly, not less than a majority of Delta’s Voting Stock or the Voting Stock of the surviving parent corporation immediately after such transaction and in substantially the same proportion as their ownership in Delta before the transaction.

“Parent Change of Control Triggering Event” means the occurrence of both a Parent Change of Control and a Rating Decline.

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

“Payment Account” shall have the meaning given such term in the Collateral Agency and Accounts Agreement.

“Payment Date” means (a) the 20th calendar day of January, April, July and October of each year, commencing January 20, 2021, or if such day is not a Business Day, the next succeeding Business Day and (b) each Termination Date.

“Payment Material Adverse Effect” means a material adverse effect on (a) the ability of Loyalty Co to pay the Obligations, (b) the validity or enforceability of any Notes Document, or (c) the validity, enforceability or collectability of the SkyMiles Agreements, the IP Licenses or the Contribution Agreements generally or any material portion of the SkyMiles Agreements, the IP Licenses or the Contribution Agreements, taken as a whole; provided that no condition or event that has been disclosed in the public filings for Delta on or prior to the Closing Date shall be considered a “Payment Material Adverse Effect” under this Indenture.

“Payroll Accounts” means depository accounts used only for payroll.

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor agency or entity performing substantially the same functions.

“Peak Debt Service Coverage Ratio” means, with respect to any Determination Date, the ratio obtained by dividing (i) the sum (without duplication) of (x) the aggregate amount of Collections deposited to the Collection Account during the Related Quarterly Reporting Period and (y) Cure Amounts deposited to the Collection Account on or prior to such Determination Date (and which remain on deposit in the Collection Account on such Determination Date) by (ii) the Maximum Quarterly Debt Service for such Determination Date; provided, however, that any amounts due during a Quarterly Reporting Period but deposited into the Collection Account no later than the Determination Date related to such Quarterly Reporting Period may at Loyalty Co’s option upon notice to the Master Collateral Agent and the Trustee, be treated as if such amounts were on deposit in the Collection Account as of the end of such Quarterly Reporting Period and if so treated, such amounts shall not be considered Collections for any other Payment Date for purposes of the Peak Debt Service Coverage Ratio calculation.
“Peak Debt Service Coverage Ratio Test” shall be satisfied as of any Determination Date if the Peak Debt Service Coverage Ratio is not less than (i) for the Determination Dates in January 2021, April 2021 and July 2021, 0.75 to 1.00; (ii) for the Determination Dates in October 2021, January 2022 and April 2022, 1.00 to 1.00; (iii) for the Determination Dates in July 2022 and October 2022, 1.50 to 1.00; and (iv) for any Determination Date thereafter, 2.00 to 1.00.

“Permitted Acquisition Loyalty Program” means a Loyalty Program owned, operated or controlled, directly or indirectly by a Specified Acquisition Entity or any of its Subsidiaries, or principally associated with such Specified Acquisition Entity or any of its Subsidiaries so long as: (1) the Specified Acquisition Entity’s Loyalty Program is operated so that it is not more competitive, taken as a whole, than the SkyMiles Program (as determined by Delta in good faith), (2) Delta does not take any action that would reasonably be expected to disadvantage the SkyMiles Program relative to the Specified Acquisition Entity’s Loyalty Program, (3) no members of the SkyMiles Program are targeted for membership in the Specified Acquisition Entity’s Loyalty Program; provided that this clause (3) shall not prohibit general advertisements, promotions or similar general marketing activities related to the Specified Acquisition Entity, (4) except as attributable to market or business conditions as determined in good faith by Delta, Delta will devote substantially similar resources to the SkyMiles Program, including to Delta distribution and marketing channels, as were applicable immediately prior to the consummation of the acquisition of the Specified Acquisition Entity; and (5) Delta does not announce to the public, the members of the SkyMiles Program or the members of the Specified Acquisition Entity’s Loyalty Program that the Specified Acquisition Entity’s Loyalty Program is the primary Loyalty Program for Delta.

“Permitted Business” means any business that is the same as, or reasonably related, ancillary, supportive or complementary to, the business in which the SPV Parties are engaged on the Closing Date or will be engaged as contemplated by the Transaction Documents (including the operation of the SkyMiles Program).

“Permitted Deposit Amounts” means any amounts deposited in the Collection Account by any Issuer as permitted for certain purposes pursuant to the Collateral Agency and Accounts Agreement.

“Permitted Disposition” means any of the following:

(a) the Disposition of Collateral permitted under the applicable Collateral Documents;
(b) the licensing or sub-licensing or granting of similar rights of Intellectual Property or other general intangibles pursuant to any SkyMiles Agreement or as otherwise permitted by (or pursuant to) the IP Agreements;

(c) the abandonment or cancellation of Intellectual Property in the ordinary course of business;

(d) any transfer, deletion, de-identification or purge of any Personal Data that is required or permitted under applicable privacy laws, under any of the Issuer Parties’ public-facing privacy policies or in the ordinary course of business (including in connection with terminating inactive SkyMiles Program member accounts) pursuant to the applicable Issuer Party’s privacy and data retention policies consistent with past practice;

(e) the Disposition of cash or Cash Equivalents constituting Collateral in exchange for other cash or Cash Equivalents constituting Collateral and having reasonably equivalent value therefor;

(f) to the extent constituting a Disposition, (i) the incurrence of Liens that are permitted to be incurred pursuant to Section 4.25 or (ii) the making of (x) any Restricted Payment that is permitted to be made, and is made, pursuant to Section 4.22 or (y) any Permitted Investment;

(g) Dispositions in connection with any Intercompany Agreement or IP Agreement;

(h) condemnation, expropriation or any similar action on assets or other dispositions required by a Governmental Authority or casualty or insured damage to assets;

(i) surrender or waive contractual rights and settle, release, surrender or waive contractual or litigation claims (or other Disposition of assets in connection therewith);

(j) the expiration of the following registered Intellectual Property: (A) any copyright, the term of which has expired under applicable law; (B) any patent, the term of which has expired under applicable law, taking into account all patent term adjustments and extensions, and provided that all maintenance fees are paid; and (C) any trademark or service mark, the term of which has expired under applicable law because a declaration or statement of use to maintain the registration cannot be submitted to, or has been finally rejected by, the relevant governmental authority because such trademark or service mark is no longer in use; in each case, subject to the terms and conditions of the IP Management Agreement;

(k) [reserved]; and

(l) the sale of Miles in the ordinary course of business under the terms of the SkyMiles Agreements.
“Permitted Investments” means:

(1) to the extent constituting an Investment, Investments in any SPV Party arising from the transactions contemplated in any Notes Document;

(2) any Investment in cash, Cash Equivalents and any foreign equivalents;

(3) any Investments received in a good faith compromise or resolution of (a) obligations of trade creditors or customers that were incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or (b) litigation, arbitration or other disputes;

(4) redemption or repurchase of the Notes;

(5) any guarantee of Indebtedness of the SPV Parties to the extent otherwise permitted under this Indenture;

(6) accounts receivable arising in the ordinary course of business; and

(7) Investments in connection with outsourcing initiatives in the ordinary course of business.

“Permitted Liens” means

(1) Liens securing the Priority Lien Debt, including pursuant to this Indenture and the Collateral Documents, so long as such Indebtedness and such Liens are subject to the Collateral Agency and Accounts Agreement;

(2) Liens securing Junior Lien Debt; provided that such Liens secured by the Collateral shall (i) rank junior to the Liens secured by the Collateral securing the Obligations and (ii) be subject to a Junior Lien Intercreditor Agreement;

(3) Liens of a collection bank arising under Section 4-208 of the New York Uniform Commercial Code or any comparable or successor provision on items in the course of collection;

(4) (i) any overdrafts and related liabilities arising from treasury, netting, depository and cash management services or in connection with any automated clearing house transfers of funds, in each case as it relates to cash or Cash Equivalents, if any, (ii) Liens in favor of depository banks or a securities intermediary arising as a matter of law or that are contractual rights of set off encumbering deposits and that are within the general parameters customary in the banking or finance industry and (iii) other than with respect to the SPV Parties, attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business;

(5) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;
(6) Liens imposed by law, including carriers’ warehousemen’s, landlord’s and mechanics’ Liens, in each case, incurred in the ordinary course of business;

(7) Liens arising by operation of law in connection with judgments, attachments or awards which do not constitute an Event of Default under this Indenture;

(8) to the extent constituting Liens, the rights granted by any Issuer Party to another Issuer Party or the Master Collateral Agent pursuant to any Intercompany Agreement or IP Agreement (other than any rights granted thereunder following any amendment or modification thereof that is not permitted by the terms of such agreement or this Indenture);

(9) (i) leases and subleases by any Grantor as they relate to any Collateral and to the extent such leases or subleases (A) do not interfere in any material respect with the business of such Grantor and (B) do not relate to Intellectual Property or SkyMiles Agreements or (ii) to the extent constituting Liens, licenses, sub-licenses and similar rights as they relate to any SkyMiles Intellectual Property (A) granted to any third-party counterparty of any SkyMiles Agreements pursuant to the terms of such agreement or (B) as otherwise expressly permitted by the IP Licenses and the Collateral Documents to be granted to any Person (other than any sub-license or similar right granted thereunder following any amendment or modification thereof that is not permitted by the terms of such agreement or this Indenture);

(10) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy or discharge Priority Lien Debt or Junior Lien Debt in connection with a permitted repayment thereof and in favor of the Master Collateral Agent (in the case of Priority Lien Debt) or the collateral agent, administrative agent or trustee in respect of such Junior Lien Debt: provided that (a) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied or discharged, (b) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged, and (c) the satisfaction or discharge of such Indebtedness is expressly permitted under this Indenture;

(11) Liens consisting of an agreement to dispose of any property pursuant to a Disposition permitted hereunder;

(12) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant, or permit held by any Grantor or by a statutory provision, to terminate any such lease, license, franchise, grant, or permit, or to require annual or periodic payments as a condition to the continuance thereof, in each case so long as such rights (A) do not interfere in any material respect with the business of such Grantor and (B) do not relate to Intellectual Property or SkyMiles Agreements except as provided in the Collateral Documents;

(13) (i) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal, or similar bonds or with respect to other regulatory requirements in connection therewith or (ii) letters of credit or bankers’ acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business;
(14) Liens in favor of banking or other financial institutions or other electronic payment service providers arising as a matter of law or customary contract encumbering deposits, including deposits in “pooled deposit” or “sweep” accounts (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(15) Liens existing on the Closing Date; and

(16) any extension, modification, renewal, refinancing or replacement of the Liens described in clauses (1) through (15) above, provided that such extension, modification, renewal or replacement does not increase the amount of Indebtedness associated therewith.

“Permitted Noteholders” means, at any time, Holders holding more than 50% of the aggregate outstanding principal amount of any Series of Notes.

“Permitted Pre-paid Miles Purchases” means Pre-paid Miles Purchases permitted by Section 4.23.

“Permitted Replacement SkyMiles Agreement” means any SkyMiles Agreement entered into by any Issuer Party to replace any Material SkyMiles Agreement (other than an Intercompany Agreement) that has been (or will be) terminated, cancelled or expired; provided that:

(1) the Rating Agency Condition has been met;

(2) the counterparty to such Permitted Replacement SkyMiles Agreement shall have a corporate rating from at least two of S&P, Moody’s and Fitch of not lower than BBB (or the equivalent thereof), Baa2 (or the equivalent thereof) and BBB (or the equivalent thereof), respectively;

(3) the projected cash revenues (as determined in good faith by the Issuer Parties) under such Permitted Replacement SkyMiles Agreement for (i) the immediately succeeding 24 months shall equal no less than 75% of the actual cash revenues of the Material SkyMiles Agreement that it is replacing and (ii) the 12 months following such 24 months shall equal no less than 85% of the actual cash revenues of the Material SkyMiles Agreement that it is replacing, in each case determined on an annualized basis using the 12 months preceding the termination of such Material SkyMiles Agreement;

(4) such Permitted Replacement SkyMiles Agreement shall expressly permit the applicable Issuer or Guarantor to pledge its rights thereunder to the Master Collateral Agent;

(5) such Permitted Replacement SkyMiles Agreement shall have confidentiality obligations that are not materially more restrictive (taken as a whole) than the confidentiality obligations in the Material SkyMiles Agreements in existence on the date hereof (as determined in good faith by the Issuers Parties); and

(6) such Permitted Replacement SkyMiles Agreement shall not have a scheduled termination date prior to the Latest Maturity Date; and
no Early Amortization Event or Event of Default would result therefrom.

It being acknowledged and agreed that so long as the conditions in clauses (1) through (7) of this definition are satisfied, an amendment and restatement, amendment and/or extension of a then existing Material SkyMiles Agreement with an existing counterparty shall constitute a Permitted Replacement SkyMiles Agreement.

“Person” means any natural person, corporation, division of a corporation, partnership, limited liability company, exempted company, trust, joint venture, association, company, estate, unincorporated organization, Airport Authority or Governmental Authority or any agency or political subdivision thereof.

“Personal Data” means (i) any information or data that alone or together with any other data or information can be used to identify, directly or indirectly, a natural person or otherwise relates to an identified or identifiable natural person and (ii) any other information or data considered to be personally identifiable information or data under applicable law.

“Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that is a pension plan subject to the provisions of Title IV of ERISA, Sections 412 or 430 of the Code or Section 302 of ERISA.

“Pre-paid Miles Purchases” means the sale by any Issuer of pre-paid Miles to a counterparty of a SkyMiles Agreement or any similar transaction involving a counterparty of a SkyMiles Agreement advancing funds to Delta or any of its Subsidiaries against future payments to Delta or any of its Subsidiaries by such counterparty under such SkyMiles Agreement.

“Priority Lien Cap” means, at any time, an amount equal to the sum of (a) $9.0 billion plus (b) the Incremental Priority Amount at such time (if any).

“Priority Lien Debt” means (i) the Term Loans outstanding under the Credit Agreement on the Closing Date; (ii) the Notes issued and outstanding on the Closing Date; and (iii) any incremental Term Loans or any additional Notes issued or any other Indebtedness incurred or issued after the Closing Date pursuant to and in accordance with Section 4.23(c).

“Priority Lien Debt Documents” means any documents, instruments, notes, credit agreements, purchase agreements or other agreements entered into in connection with the incurrence or issuance of any Priority Lien Debt (including the Note Documents and the Term Loan Documents).

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

“Pro Rata Share” means, on any date, a proportion equal to (a) the aggregate principal amount of the Notes (or applicable Series of Notes, if applicable) outstanding on such date divided by (b) the aggregate principal amount of Priority Lien Debt outstanding on such date.
“proceeds” means all “proceeds” as such term is defined in Article 9 of the UCC, including, without limitation, payments or distributions made with respect to any investment property, whatever is receivable or received when Collateral or proceeds are sold, leased, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, and any and all proceeds of loans.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Qualified Replacement Assets” means assets used or useful in the business of the Issuer Parties that shall be pledged as Collateral on a first lien basis.

“Quarterly Reporting Period” means (a) initially, the period commencing on the Closing Date and ending on December 31, 2020, and (b) thereafter, each successive period of three consecutive months.

“Quotation Agent” means one of the Reference Treasury Dealers appointed by the Issuers.

“Rating Agency” means (1) each of Fitch, Moody’s, and S&P, and (2) if any of Fitch, Moody’s, or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of Delta’s control, a “nationally recognized statistical rating organization” as defined in Section 3 (a) (62) of the Exchange Act, selected by Delta (as certified by a resolution of Delta’s Board of Directors) as a replacement agency for Fitch, Moody’s, or S&P, or all of them, as the case may be.

“Rating Agency Condition” means, with respect to any then-outstanding Notes and any action, the Issuers have provided evidence to the Trustee that each Rating Agency that initially rated the notes and provides a rating for the Notes at such time has provided a written confirmation that such action will not result in either (A) a withdrawal of its credit ratings on the then-outstanding Notes or (B) the assignment of credit ratings on the then-outstanding Notes below the lower of (x) the then-current credit ratings on such Notes and (y) the initial credit ratings assigned to such Notes (in each case, without negative implications); provided that any time that there are no Notes rated by a Rating Agency, references to any condition or requirement that the “Rating Agency Condition” shall have been satisfied shall have no effect and no such action shall be required.

“Rating Decline” means with respect to the Notes, if, within 60 days after public notice of the occurrence of a Parent Change of Control (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any Rating Agency providing a rating for the Notes), the rating of the Notes by each Rating Agency that initially rated the notes and provides a rating for the Notes at such time shall be decreased by one or more gradations and in each case below Investment Grade; provided that a Rating Decline shall not be deemed to have occurred if such Rating Agencies have not expressly indicated that such downgrade is a result of such Parent Change of Control.
“Recovery Event” means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any Collateral.

“Reference Treasury Dealer” means each of (i) Goldman Sachs & Co. LLC, Barclays Capital Inc., J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC or one of their respective affiliates; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Issuers will substitute therefor another Primary Treasury Dealer and (ii) a Primary Treasury Dealer selected by U.S. Bancorp Investments, Inc.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Issuers, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to us and the Trustee by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business Day preceding such redemption date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Regulation S Global Note” means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

“Regulation S Permanent Global Note” means a permanent Global Note in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Notes Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

“Regulation S Temporary Global Note” means a temporary Global Note in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of and registered in the name of the Notes Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

“Regulation S Temporary Global Note Legend” means the legend set forth in Section 2.06(g)(iii) hereof.

“Related Quarterly Reporting Period” means the most recently completed Quarterly Reporting Period.

“Required Debtholders” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Required Number of Independent Directors” means, with respect to Loyalty Co, two (2) Independent Directors, and, with respect to all other SPV Parties, one (1) Independent Director.
“Requirement of Law” means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, or requirements of, any Governmental Authority, in each case having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Reserve Account” shall have the meaning given such term in the Collateral Agency and Accounts Agreement.

“Responsible Officer” means (i) with respect to any Issuer Party other than Delta, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Director, any Manager, any Managing Member or any Vice-President of such Person, (ii) with respect to Delta, the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, vice president, controller, chief accounting officer, secretary or assistant secretary of Delta, but in any event, with respect to financial matters, the chief financial officer, treasurer, assistant treasurer, controller or chief accounting officer of Delta, (iii) with respect to certain limited liability companies or partnerships that do not have officers, any manager, sole member, managing member or general partner thereof and (iv) with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee (or any successor division, unit, or group of the Trustee) who shall have direct responsibility for the administration of this Indenture.

“Restricted Definitive Note” means a Definitive Note bearing the Private Placement Legend.

“Restricted Global Note” means a Global Note bearing the Private Placement Legend.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Period” means the 40-day distribution compliance period as defined in Regulation S.

“Retained Agreements” means, at any time, all currently existing co-branding, partnering or similar agreements related to or entered into in connection with the SkyMiles Program and with respect to which the rights therein have not been transferred to Loyalty Co to the extent permitted under the Credit Agreement, but excluding the Delta Air Line Business Agreements

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated under the Securities Act.

“Sale of a Grantor” means, with respect to any Collateral, an issuance, sale, lease, conveyance, transfer or other disposition of the Equity Interests of the applicable Grantor that owns such Collateral.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the United States government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

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

“Scheduled Principal Amortization Amount” means the 2025 Notes Scheduled Principal Amortization Amount or the 2028 Notes Scheduled Principal Amortization Amount, as applicable.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Agreement” means that certain Security Agreement, dated on or prior to the Closing Date, among Loyalty Co, HoldCo 3 and the Master Collateral Agent, as it may be amended and restated from time to time.

“Senior Secured Amortization Amount” means, with respect to any Payment Date, the sum of:

(a) the Scheduled Principal Amortization Amount that will be due on such Payment Date for each Series of Notes; and

(b) the sum of the “Scheduled Principal Amortization Amounts” (as such term, or such similar or analogous term, is defined in the other applicable Senior Secured Debt Documents) that will be due on such Payment Date for each Series of Senior Secured Debt (other than the Notes) (but excluding, for the avoidance of doubt, any balloon or bullet payments of the principal amount thereof at final maturity thereof).

“Senior Secured Debt” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Senior Secured Debt Documents” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.
“Senior Secured Debt Event of Default” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Senior Secured Debt Obligations” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Senior Secured Debt Representative” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Senior Secured Parties” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“Series” means any series of Notes established pursuant to this Indenture.

“Series of Senior Secured Debt” has the meaning ascribed to such term in the Collateral Agency and Accounts Agreement.

“SkyMiles Agreements” means all currently existing, future and successor co-branding, partnering or similar agreements related to or entered into in connection with the SkyMiles Program including each Material SkyMiles Agreement, but excluding (i) agreements used to operate the Delta airline business that, even if used in connection with the SkyMiles Program, would be used to operate the Delta airline business in the absence of a Loyalty Program (it being agreed that the agreements set forth in clause (i) shall not include any credit card co-branding, partnering or similar agreements) (“Delta Air Line Business Agreements”) and (ii) any Retained Agreements.

“SkyMiles Customer Data” means all data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or Loyalty Co and used, generated or produced as part of the SkyMiles Program, including all of the following: (a) a list of all members of the SkyMiles Program; and (b) the SkyMiles Member Profile Data for each member of the SkyMiles Program, but excluding Delta Traveler Related Data.

“SkyMiles Intellectual Property” means (a) SkyMiles Customer Data, (b) certain proprietary source code set forth in a schedule to the Credit Agreement, (c) certain registered trademarks and trademark applications set forth in a schedule to the Credit Agreement, (d) certain issued patents and patent applications set forth in a schedule to the Credit Agreement, (e) certain registered copyrights set forth in a schedule to the Credit Agreement, and (f) certain data, proprietary source code, registered trademarks, issued patents, registered copyrights and applications for the foregoing, in each case, that are owned or purported to be owned by Delta or its Subsidiaries and are used in the SkyMiles Program and which are required to be contributed to Loyalty Co from time to time as set forth in Section 4.07. For the avoidance of doubt, the SkyMiles Intellectual Property shall exclude all Delta Intellectual Property.

“SkyMiles Member Profile Data” means with respect to each member of the SkyMiles Program such member’s (a) name, mailing address, email address, and phone numbers, (b) communication and promotion opt-ins, (c) total miles balance, (d) third-party engagement history, (e) accrual and redemption activity, (f) SkyMiles Program account number and (g) annual member status (e.g., Medallion, Gold Medallion, etc.); provided that clauses (b) through (e) shall exclude Delta Traveler Related Data.
“SkyMiles Program” means any Loyalty Program which is operated, owned or controlled, directly or indirectly by Loyalty Co, Delta or any of its subsidiaries, or principally associated with Loyalty Co, Delta or any of its subsidiaries, as in effect from time to time, whether under the “SkyMiles” name or otherwise, in each case including any successor program, but excluding any Permitted Acquisition Loyalty Program and any Specified Minority Owned Program.

“SkyMiles Revenues” means, with respect to any period, the aggregate amount of cash revenues attributable to the SkyMiles Program during such period (including any cash revenue attributable to the Retained Agreements and the Intercompany Agreements).

“Specified Acquisition Entity” means any entity that is (x) acquired by Delta or any of its Subsidiaries (other than any SPV Party) after the Closing Date (whether such entity becomes wholly or less than 100% owned by Delta or any of its Subsidiaries (other than any SPV Party)) or (y) another commercial airline (including any business lines or divisions thereof) with which Delta or such a Subsidiary of Delta merges or enters into an acquisition transaction.


“Specified Minority Owned Program” means the primary Loyalty Program operated by LATAM, AeroMexico, Virgin Atlantic, Air France-KLM, Korean, China Eastern and any other airline (or entity that operates the loyalty program thereof) in which Delta has a Non-Control Investment, in each case only so long as such entity remains a Non-Control Investment of Delta.

“Specified Organization Documents” means (i) the Amended and Restated Memorandum of Association of Loyalty Co, dated the date hereof, (ii) the Amended and Restated Memorandum of Association of HoldCo 3, dated the date hereof, (iii) the Amended and Restated Memorandum of Association of HoldCo 2, dated the date hereof and (iv) the Amended and Restated Memorandum of Association of HoldCo 1, dated the date hereof, in each case, as may be amended from time to time.

“SPV Parties” means Loyalty Co, HoldCo 1, HoldCo 2 and HoldCo 3.

“SPV Party Change of Control” means the occurrence of any of the following:

(i) the failure of Delta to directly own 100% of the Equity Interests in HoldCo 1 (excluding any special share(s) issued to Walkers Fiduciary Limited);

(ii) the failure of HoldCo 1 to directly own 100% of the Equity Interests in HoldCo 2 (excluding any special share(s) issued to Walkers Fiduciary Limited);

(iii) the failure of HoldCo 2 to directly own 100% of the Equity Interests in HoldCo 3 (excluding any special share(s) issued to Walkers Fiduciary Limited); or
(iv) the failure of HoldCo 3 to directly own 100% of the Equity Interests in Loyalty Co (excluding any special share(s) issued to Walkers Fiduciary Limited).

“SPV Provisions” means the definitions and articles specified in the definition of “Prohibited Resolutions” in the Specified Organization Documents of each SPV Party.

“Stated Maturity” means, with respect to any installment of interest or principal on the Notes, the date on which the payment of interest or principal was scheduled to be paid under this Indenture as of the Closing Date, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership, limited liability company or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting; provided, that any instrument evidencing Indebtedness convertible or exchangeable for Stock shall not be deemed to be Stock, unless and until any such instruments are so converted or exchanged.

“Stock Equivalents” means all equity securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable; provided, that any instrument evidencing Indebtedness convertible or exchangeable for Stock shall not be deemed to be Stock, unless and until any such instruments are so converted or exchanged.

“Subsidiary” means, with respect to any Person (in this definition referred to as the “parent”), any corporation, association or other business entity (whether now existing or hereafter organized) of which at least a majority of the securities or other ownership or membership interests having ordinary voting power for the election of directors (or equivalent governing body) is, at the time as of which any determination is being made, owned or controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Taxes” means any and all present or future taxes, levies, imposts, duties, assessments, fees, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Documents” means the Credit Agreement, the Collateral Documents, and all other documents designated as “Loan Documents” (or similar terms) in or pursuant to the Credit Agreement.

“Term Loans” means all term loans made pursuant to the Credit Agreement.

“Termination Date” means, (1) for the 2025 Notes, the earlier to occur of (a) October 20, 2025 and (b) the date of acceleration of the 2025 Notes in accordance with the terms of this Indenture and (2) for the 2028 Notes, the earlier to occur of (a) October 20, 2028 and (b) the date of acceleration of the 2028 Notes in accordance with the terms of this Indenture.
“Third-Party Processors” means a third-party provider or other third party that accesses, collects, stores, transmits, transfers, processes, discloses or uses Personal Data on behalf of an Issuer.

“Trade Secrets” means all confidential and proprietary information, including trade secrets (as defined under the Uniform Trade Secrets Act or the federal Defend Trade Secrets Act of 2016) and proprietary know-how, which may include all inventions (whether or not patentable), invention disclosures, methods, processes, designs, algorithms, source code, customer lists and data (including SkyMiles Customer Data), databases, compilations, collections of data, practices, processes, specifications, test procedures, flow diagrams, research and development, and formulas.

“Transaction Documents” means the Notes Documents, the IP Agreements, the Intercompany Agreements, the Delta Intercompany Note, the Deeds of Undertaking and the Specified Organization Documents.

“Transaction Revenue” means, without duplication, (a) all cash revenues paid to Loyalty Co under the SkyMiles Agreements other than the Intercompany Agreements, (b) all cash revenues paid to Loyalty Co under the Intercompany Agreements and the IP Licenses and (c) all other cash revenues of Loyalty Co (which shall include all cash revenues of the SkyMiles Program). For the avoidance of doubt, Transaction Revenues shall not include (i) payments made by any SPV Party to any other SPV Party and (ii) any Permitted Deposit Amounts and (iii) any taxes paid to Loyalty Co that Loyalty Co collects for, or on behalf of, any Governmental Authority.

“Treasury Rate” means with respect to any redemption date, the rate per year equal to the semi-annual equivalent yield to maturity or interpolated yield (on a day count basis) of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date. The Treasury Rate will be calculated by the Quotation Agent on the third Business Day preceding the redemption date.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date hereof.

“Trustee” means U.S. Bank National Association, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“UCC” means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

“Unrestricted Cash” means cash and Cash Equivalents of Delta that (i) may be classified, in accordance with GAAP, as “unrestricted” on the consolidated balance sheets of Delta or (ii) may be classified, in accordance with GAAP, as “restricted” on the consolidated balance sheets of Delta solely in favor of the Senior Secured Parties.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.
“Unrestricted Global Note” means a permanent Global Note, substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note, in each case that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Notes Depositary, representing Notes that do not bear the Private Placement Legend.

“U.S. Person” means a U.S. person as defined in Rule 902(k) under the Securities Act.

“Voting Stock” of any specified person as of any date means the capital stock of such person that is at the time entitled to vote generally in the election of the board of directors of such person.

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

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

(y) the then-outstanding principal amount of such Indebtedness.

Section 1.02 Other Definitions.

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Section 1.03  [Reserved].

Section 1.04  Rules of Construction

Unless the context otherwise requires:

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

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

(c) “or” is not exclusive;
words in the singular include the plural, and in the plural include the singular;

“will” shall be interpreted to express a command;

provisions apply to successive events and transactions;

references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

unless the context otherwise requires, any reference to an “Article,” “Section,” “clause” or “Exhibit” refers to an Article, Section, clause or Exhibit, as the case may be, of this Indenture; and

the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause, other subdivision or Exhibit.

Section 1.05 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments or records of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Issuers, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuers in reliance thereon, whether or not notation of such action is made upon such Note.
Section 2.01 Form and Dating: Terms.

(a) General. The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of $2,000 and integral multiples of $1.00 in excess thereof.
(b) **Global Notes.** Notes issued in global form shall be substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A-1 hereto for a 2025 Note or substantially in the form of Exhibit A-2 hereto for a 2028 Note (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the “Schedule of Exchanges of Interests in the Global Note” attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect prepayments, repurchases, exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby resulting from exchange from one Global Note to another shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) **Temporary Global Notes.** Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Notes Depositary, and registered in the name of the Notes Depositary or the nominee of the Notes Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Notes Depositary or its nominee, as the case may be, in connection with transfers of interest, exchanges, prepayments, repurchases and redemption as hereinafter provided.

(d) **Terms.** The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes in Exhibit A-1 and Exhibit A-2 attached hereto shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.
The Notes shall be subject to repurchase by the Issuers pursuant to a Mandatory Repurchase Offer as provided in Section 3.09 hereof or a Parent Change of Control Offer as provided in Section 4.34 hereof. The Notes shall not be redeemable or prepayable, other than as provided in Article 3.

Additional Notes ranking pari passu with the 2025 Notes or the 2028 Notes, as applicable, may be created and issued from time to time by the Issuers without notice to or consent of the Holders and shall be consolidated with and form a single class with such applicable Initial Notes and shall have identical terms and conditions (other than the issue price, issuance date, first Payment Date, the date from which interest will accrue, CUSIP and/or other securities numbers and, to the extent necessary, certain temporary securities law transfer restrictions) as such Initial Notes; provided, that the Issuers’ ability to issue Additional Notes shall be subject to the Issuers’ compliance with Section 4.23 hereof. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture. Upon issuance of Additional Notes, the remaining applicable Scheduled Principal Amortization Amounts shall be increased on a pro rata basis to reflect such issuance, which increase will occur automatically upon the issuance of such Additional Notes.

Section 2.02 Execution and Authentication.

One or more Responsible Officers of each Issuer shall sign the Notes on behalf of the Issuers by manual or facsimile signature.

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

A Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture. A Note shall be dated the date of its authentication unless otherwise provided by resolution of the Board of Directors of the Issuers, a supplemental indenture or an Officer’s Certificate. On the Closing Date, the Trustee shall, upon receipt of an Issuer Order (an “Authentication Order”), authenticate and deliver the Initial Notes. In addition, at any time, from time to time, the Trustee shall upon receipt of an Authentication Order authenticate and deliver any Additional Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes issued hereunder.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent of services of notices and demands.
Section 2.03 Registrar and Paying Agent.

The Issuers shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“Registrar”) and an office or agency where Notes may be presented for payment (“Paying Agent”). The Registrar shall keep a register of the Notes (“Note Register”) and of their transfer and exchange. The Issuers may have one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without prior notice to any Holder. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuers hereby appoint the Trustee at its Corporate Trust Office as Registrar and Paying Agent for the Notes unless another Registrar or Paying Agent, as the case may be, is appointed prior to the time the Notes are first issued. The Issuers shall notify the Trustee of the name and address of any Agent not a party to this Indenture.

The Issuers initially appoint DTC to act as Notes Depositary with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

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

Section 2.05 Holder Lists.

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

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Notes Depositary or to a successor Notes Depositary or a nominee of such successor Notes Depositary. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless (i) the Notes Depositary notifies the Issuers that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Notes Depositary is not appointed by the Issuers within 120 days or (ii) there shall have occurred and be continuing a Default or Event of Default with respect to the Notes. Upon the occurrence of any of the preceding events in (i) or (ii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Notes Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.07 and Section 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or Section 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in (i) or (ii) above and pursuant to Section 2.06(b)(ii)(B) and Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); provided, however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or Section 2.06(c) hereof.
(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Notes Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

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

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof but otherwise comply with the terms of this Indenture, including Section 2.06(a) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Notes Depositary in accordance with the Applicable Procedures directing the Notes Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) subsequent to any of the events in clauses (i) or (ii) of Section 2.06(a), a written order from a Participant or an Indirect Participant given to the Notes Depositary in accordance with the Applicable Procedures directing the Notes Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Notes Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; provided, that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of the certificates in the form of Exhibit B hereto. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.
(iii) **Transfer of Beneficial Interests to Another Restricted Global Note.** A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

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

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

(iv) **Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.** A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or
(B) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 2.06(b)(iv), if the Registrar or Issuers so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar and Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to this Section 2.06(b)(iv) at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to this Section 2.06(b)(iv).

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

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

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any Holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in clauses (i) or (ii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

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

(C) if such beneficial interest is being transferred to a non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;
(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Issuers, the Guarantors or any of their respective Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

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

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

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

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A Holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and if the Registrar receives the following:

   (A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or
(B) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case, if the Registrar or Issuers so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar and Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any Holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and, upon receipt of an Authentication Order, the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from or through the Notes Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

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

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

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;
(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Issuers, the Guarantors or any of their respective Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) of this Section 2.06(d)(i), the applicable Restricted Global Note, in the case of clause (B) of this Section 2.06(d)(i), the applicable 144A Global Note, and in the case of clause (C) of this Section 2.06(d)(i), the applicable Regulation S Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

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

(B) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

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and, in each such case set forth in this Section 2.06(d)(ii), if the Registrar or Issuers so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar and Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the applicable conditions in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to clauses (ii) or (iii) of this Section 2.06(d) at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder’s compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;
if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) **Restricted Definitive Notes to Unrestricted Definitive Notes.** Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(A) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(B) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 2.06(e)(ii), if the Registrar or Issuers so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar and Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) **Unrestricted Definitive Notes to Unrestricted Definitive Notes.** A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) [Reserved].

(g) **Legends.** The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) **Private Placement Legend.**

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:
“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS THE DATE ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED UNDER RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREOF, ONLY (A) TO THE ISSUERS, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, OR (E) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C) OR (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.”

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii), or (e)(iii) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.
(ii) **Global Note Legend.** Each Global Note shall bear a legend in substantially the following form:

“This Global Note is held by the Notes Depositary (as defined in the indenture governing this Note) or its nominee in custody for the benefit of the beneficial owners hereof, and is not transferable to any person under any circumstances except that (i) the trustee may make such notations hereon as may be required pursuant to Section 2.06(h) of the indenture, (ii) this Global Note may be exchanged in whole but not in part pursuant to Section 2.06(a) of the indenture, (iii) this Global Note may be delivered to the trustee for cancellation pursuant to Section 2.11 of the indenture and (iv) this Global Note may be transferred to a successor notes depositary with the prior written consent of the issuers. Unless and until it is exchanged in whole or in part for notes in definitive form, this Note may not be transferred except as a whole by the notes depositary to a nominee of the notes depositary or by a nominee of the notes depositary to the notes depositary or another nominee of the notes depositary or by the notes depositary or any such nominee to a successor notes depositary or a nominee of such successor notes depositary. Unless this certificate is presented by an authorized representative of the Depository Trust Company (55 Water Street, New York, New York) ("DTC") to the issuers or their agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of CEDE & Co. or such other name as may be requested by an authorized representative of DTC (and any payment is made to CEDE & Co. or such other entity as may be requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, CEDE & Co., has an interest herein.”

(iii) **Regulation S Temporary Global Note Legend.** The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

“This security has not been registered under the United States Securities Act of 1933 (the “Securities Act”) and may not be offered, sold or delivered in the United States or to, or for the account or benefit of, any US person, unless such notes are registered under the Securities Act or an exemption from the registration requirements thereof is available. The foregoing shall not apply following the expiration of forty days from the later of (i) the date on which these notes were first offered and (ii) the date of issuance of these notes.”
(iv) **OID Legend.** Each Global Note and each Definitive Note issued at a more than de minimis discount to its redemption price at maturity (and all Notes issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

“The following information is supplied solely for U.S. Federal Income Tax purposes. This Note was issued with Original Issue Discount (“OID”) within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended (the “Code”), and this Legend is required by Section 1275(C) of the Code. Holders may obtain information regarding the amount of OID, the issue price, the issue date and the yield to maturity relating to the Notes by contacting the Issuers at Delta Air Lines, Inc., Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia, 30320-6001 or (404)-715-2600.”

(v) **ERISA Legend.** Each Global Note and each Definitive Note issued in exchange for a beneficial interest in a Global Note (and all Notes issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

“Other than with respect to one or more Purchasers on the Closing Date which have made certain representations satisfactory to the Issuers, by its acquisition or acceptance of this Note or any interest hereinafter, the Holder will be deemed to have represented, warranted and agreed that either: (A) it is not and is not deemed to be (I) an Employee Benefit Plan subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), (II) a Plan, Account or Arrangement described in Section 4975(E)(1) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), (III) an entity whose underlying assets are deemed to include assets of any such Employee Benefit Plan, Plan, Account or Arrangement (each of the foregoing, a “Benefit Plan Investor”), or (IV) a Plan, Account or Arrangement (such as a Governmental, Church or Non-U.S. Plan) that is subject to any Federal, State, Local, Non-U.S. or other U.S. Laws or regulations that are similar to the fiduciary responsibility provisions of ERISA or the prohibited transaction rules of Section 406 of ERISA or Section 4975 of the Code (“Similar Laws”); or (B) the acquisition and holding of this Note or any interest hereinafter by the Holder do not and will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation of any similar Laws.”

(h) **Cancellation and/or Adjustment of Global Notes.** At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Notes Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Notes Depositary at the direction of the Trustee to reflect such increase.
General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar’s request.

(ii) No service charge shall be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Section 2.10, Section 3.06, Section 3.07, Section 3.08, Section 3.09, Section 4.34 and Section 9.05 hereof).

(iii) Neither the Registrar nor the Issuers shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

(v) The Issuers shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption or tendered (and not withdrawn) for repurchase in connection with a Parent Change of Control Offer, a Mandatory Repurchase Offer or other tender offer, in whole or in part, except the unredeemed or untendered portion of any Note being redeemed or repurchased in part or (C) to register the transfer of or to exchange a Note between a record date and the next succeeding Interest Payment Date.
Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of interest, principal and premium, if any, on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to **Section 4.35** hereof, the Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuers shall execute, and the Trustee shall authenticate and deliver, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of **Section 2.02** hereof.

All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this **Section 2.06** to effect a registration of transfer or exchange may be submitted by facsimile or other form of electronic transmission approved by the Registrar.

The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a Participant or Indirect Participant in, the Notes Depositary or other Person with respect to the accuracy of the records of the Notes Depositary or its nominee or of any Participant or Indirect Participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant, member, beneficial owner, or other Person (other than the Notes Depositary) of any notice (including any notice of redemption or purchase) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. The Trustee may rely and shall be fully protected in relying upon information furnished by the Notes Depositary with respect to its members, Participants or Indirect Participants, and any beneficial owners.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among the Notes Depositary’s participants, members, or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. None of the Trustee nor any of its agents shall have any responsibility for any actions taken or not taken by the Notes Depositary.
Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Issuers shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Issuers and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Issuers or the Trustee that such Note has been acquired by a bona fide purchaser, the Issuers shall execute, and upon the Issuers’ request the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuers, in their discretion, may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section, the Issuers may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in this Section 2.08 or Section 2.09 hereof, a Note does not cease to be outstanding because the Issuers or an Affiliate of the Issuers holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.
If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

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

Subject to Section 2.09, in determining whether the Holders of the requisite principal amount of outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of Notes that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02.

Section 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuers, or by any Affiliate of the Issuers, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not either Issuer or any obligor upon the Notes or any Affiliate of the Issuers or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders and beneficial Holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial Holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of cancelled Notes (subject to the record retention requirement of the Exchange Act) in accordance with its customary procedures. Certification of the disposal of all cancelled Notes shall be delivered to the Issuers upon their written request. The Issuers may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation. Upon any cancellation of Notes that have been acquired by the Issuers and delivered to the Trustee for cancellation pursuant to this Section 2.11, the remaining applicable Scheduled Principal Amortization Amounts shall be reduced on a pro rata basis to reflect such cancellation.
Section 2.12  Defaulted Interest.

If the Issuers or the Guarantors default in a payment of interest or principal on the Notes or in the payment of any other amount become due under this Indenture, whether at the Stated Maturity, by acceleration or otherwise, the Issuers shall on written demand of the Trustee pay interest, to the extent permitted by law, on all overdue amounts up to (but not including) the date of actual payment (after as well as before judgment) at a rate equal to the rate then applicable plus 2.0%, pursuant to clause (a) or (b) below, as the Issuers shall elect:

(a) The Issuers may elect to make such payment to the persons who are Holders of the Notes on a subsequent special record date. The Issuer shall fix the payment date for such defaulted interest and the special record date therefor, which shall not be more than 15 days nor less than 10 days prior to such payment date. At least 10 days before the special record date, the Issuers shall mail to the Trustee and to each Holder of the Notes a notice that states the special record date, the payment date and the amount of interest to be paid.

(b) The Issuers may elect to make such payment in any other lawful manner.

Payment of defaulted interest and any interest thereon to the Trustee shall be deemed to satisfy the Issuers’ obligation to pay such defaulted interest and any interest thereon for all purposes of this Indenture.

Section 2.13  CUSIP and ISIN Numbers.

The Issuers in issuing the Notes may use “CUSIP” and/or “ISIN” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” and/or “ISIN” numbers in notices as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other elements of identification printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers.

ARTICLE 3

REDEMPTION

Section 3.01  Notices to Trustee.

If the Issuers elect to redeem Notes of a Series pursuant to Section 3.07 hereof, they shall furnish to the Trustee, not less than 10 days before notice of redemption is required to be sent or caused to be sent to Holders of Notes of such Series pursuant to Section 3.03 hereof but not more than 60 days before a redemption date (except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture), an Officer’s Certificate setting forth (i) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes to be redeemed, (iv) the redemption price and (v) if applicable, any conditions to such redemption.
Section 3.02 Selection of Notes to Be Redeemed.

If less than all of the Notes of a Series are to be redeemed at any time, such Notes shall be selected for redemption by the Trustee (1) if such Notes are listed on an exchange and such listing is known to the Trustee, in compliance with the requirements of such exchange or in the case of Global Notes, in accordance with customary procedures of the Notes Depositary or (2) on a pro rata basis to the extent practicable, or, if the pro rata basis is not practicable for any reason, by lot or by such other method as the Trustee considers fair and appropriate and in accordance with methods generally used at the time of selection by indenture trustees in similar circumstances. Such Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 10 nor more than 60 days prior to the redemption date from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in minimum amounts of $2,000 or integral multiples of $1.00 in excess thereof; no Notes of $2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1.00, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

The Trustee shall not be responsible for any actions taken or not taken by a Notes Depositary pursuant to its Applicable Procedures.

Section 3.03 Notice of Redemption.

If the Issuers elect to redeem Notes of a Series pursuant to Section 3.07 hereof, the Issuers shall deliver notices of redemption electronically or by first-class mail, postage prepaid, at least 10 but not more than 60 days before the purchase or redemption date to each Holder of Notes of such Series (with a copy to the Trustee) at such Holder’s registered address or otherwise in accordance with the Applicable Procedures of the Notes Depositary, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 11 hereof. Notices of redemption may be conditional.

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

(i) the redemption date;

(ii) the redemption price;
(iii) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed shall be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(iv) the name and address of the Paying Agent;

(v) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(vi) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

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

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

(ix) any condition to such redemption.

At the Issuers’ request, the Trustee shall give the notice of redemption in the Issuers’ names and at their expense; provided that the Issuers shall have delivered written notice to the Trustee, at least 5 Business Days prior to the date on which notice of redemption is to be sent (unless a shorter notice shall be agreed to by the Trustee) in the form of an Officer’s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Any notice of any redemption may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuers’ discretion, be subject to one or more conditions precedent, including, without limitation, the consummation of an incurrence or issuance of debt or equity or a Change of Control or other corporate transaction. If such redemption is so subject to satisfaction of one or more conditions precedent, such notice shall describe each such condition, and if applicable, shall state that, in the Issuers’ discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In addition, the Issuers may provide in such notice that payment of the redemption price and performance of the Issuers’ obligations with respect to such redemption may be performed by another Person.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price, unless such redemption is conditioned on the happening of a future event. The notice, if sent in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.
Section 3.05 Deposit of Redemption or Purchase Price.

Subject to the last paragraph of Section 3.03, prior to 4:00 p.m. (Eastern time) on the Business Day prior to the redemption or purchase date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a record date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Definitive Note that is redeemed or purchased in part, the Issuers shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; provided, that each new Note shall be in a principal amount of $2,000 or an integral multiple of $1.00 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer’s Certificate is required for the Trustee to authenticate such new Note.

Section 3.07 Optional Redemption.

(a) At any time, the Issuers may on one or more occasions redeem all or a part of the 2025 Notes, upon notice as described under Section 3.03 hereof, at a redemption price equal to 100.0% of the principal amount of the 2025 Notes to be redeemed plus the 2025 Notes Make-Whole Amount as of, and accrued and unpaid interest, if any, thereon, to, but not including, the date of redemption (the “Redemption Date”).

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(b) At any time, the Issuers may on one or more occasions redeem all or a part of the 2028 Notes, upon notice as described under Section 3.03 hereof, at a redemption price equal to 100.0% of the principal amount of the 2028 Notes to be redeemed plus the 2028 Notes Make-Whole Amount as of, and accrued and unpaid interest, if any, thereon, to, but not including, the Redemption Date.

(c) Notwithstanding this Section 3.07, in connection with a Parent Change of Control Offer, if Holders of not less than 90.0% in aggregate principal amount of the outstanding Notes of a Series validly tender and do not withdraw such Notes in such tender offer and the Issuers, or any third party making such a tender offer in lieu of the Issuers, purchase all of the Notes validly tendered and not withdrawn by such Holders, the Issuers or such third party will have the right upon not less than 20 nor more than 60 days’ prior notice, given not more than 30 days following such purchase date, to redeem all Notes of such Series that remain outstanding following such purchase at a redemption price equal to 101% of the principal amount thereof plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not including, the applicable Redemption Date (subject to the right of Holders on record on the relevant record date to receive interest on the relevant interest payment).

(d) If the optional Redemption Date is on or after a record date and on or before the corresponding Interest Payment Date, the accrued and unpaid interest, if any, to, but not including, the Redemption Date will be paid on the Redemption Date to the Holder in whose name the Note is registered at the close of business on such record date in accordance with the applicable procedures of DTC, and no additional interest will be payable to Holders whose Notes will be subject to redemption by the Issuers.

(e) If a portion but not all of a Series of Notes are redeemed, automatically upon such redemption the remaining applicable Scheduled Principal Amortization Amounts shall be reduced on a pro rata basis to reflect such partial redemption.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 hereof.

Section 3.08 Mandatory Prepayments.

(a) Within five (5) Business Days of Loyalty Co or any other SPV Party receiving any Net Proceeds from the issuance or incurrence of any Indebtedness of Loyalty Co or any other SPV Party (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 4.23), the Issuers shall cause each Series of Notes’ Pro Rata Share of such Net Proceeds (the "Issuance Mandatory Prepayment Amount"), plus accrued and unpaid interest on the aggregate principal amount of Notes to be prepaid to, but excluding, the Prepayment Date (as defined below) (the “Issuance Remitted Amount”), to be remitted to the Trustee to be paid by the Trustee to Holders as of the Prepayment Record Date (as defined below) (such remittance date, as the case may be, a “Issuance Prepayment Date”).

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(b) Within ten (10) Business Days of Delta or any of its Subsidiaries receiving any Net Proceeds of a Pre-paid Miles Purchase which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Pre-paid Miles Purchases since the Closing Date, are in excess of $500.0 million (such excess, “Excess PPM Net Proceeds”, and such event, a “PPM Mandatory Prepayment Event”), the Issuers shall cause each Series of Notes’ Pro Rata Share of such Excess PPM Net Proceeds (the “PPM Mandatory Prepayment Amount”), plus accrued and unpaid interest on the aggregate principal amount of Notes to be prepaid to, but excluding, the Prepayment Date (as defined below) (the “PPM Remitted Amount”), to be remitted to the Trustee to be paid by the Trustee to Holders as of the Prepayment Record Date (as defined below) (such remittance date, as the case may be, a “PPM Prepayment Date”); provided that the Issuers shall not be required to make such prepayment so long as the aggregate amount of Net Proceeds received from Pre-paid Miles Purchases since the Closing Date is less than $505.0 million.

(c) “Mandatory Prepayment Event” means each of the events set forth in the foregoing clauses (a) and (b). “Applicable Mandatory Prepayment Amount” means either the Issuance Mandatory Prepayment Amount or the PPM Mandatory Prepayment Amount, as applicable. “Remitted Amount” means either the Issuance Remitted Amount or the PPM Remitted Amount, as applicable. “Prepayment Date” shall either the Issuance Prepayment Date or the PPM Prepayment Date, as applicable.

(d) On such Prepayment Date, the Trustee will apply the Remitted Amount to prepay the maximum principal amount of each Series of Notes that may be prepaid with the portion of such Remitted Amount representing the Applicable Mandatory Prepayment Amount at a prepayment price equal to the redemption price that would be due if the Series of Notes were being redeemed pursuant to Section 3.07 on the applicable Prepayment Date, plus accrued and unpaid interest on the principal amount being prepaid up to, but excluding, the Prepayment Date. The “Prepayment Record Date” for any Prepayment Date will be the date of the applicable Mandatory Prepayment Event.

(e) Notwithstanding Sections 3.08(a), (b) and (d), if following a Mandatory Prepayment Event but prior to the related Prepayment Date, the Issuers pay the related Applicable Mandatory Prepayment Amount to the Holders on an intervening Payment Date pursuant to the provisions described under Section 4.01, no mandatory prepayment pursuant to the provisions of Sections 3.08(a), (b) and (d) will be required.

(f) In connection with any mandatory prepayment of a Series of Notes pursuant to this Section 3.08, the Issuers, or the Trustee of behalf of the Issuers pursuant to written instructions from the Issuers to the Trustee, shall issue a written notice to the Holders at least two (2) Business Days prior to the Prepayment Date, which notice shall include a description of the Mandatory Prepayment Event, the aggregate principal amount of Notes to be prepaid, the prepayment price and the Prepayment Date.

(g) If a portion but not all of a Series of Notes are prepaid (which, for the avoidance of doubt, shall include a prepayment consummated on an intervening Payment Date pursuant to Section 3.08(c)), automatically upon such prepayment the remaining applicable Scheduled Principal Amortization Amounts shall be reduced on a pro rata basis to reflect such partial repayment.
Any prepayment made pursuant to this Section 3.08 shall be made pursuant to the procedures set forth in this Indenture, except to the extent inconsistent with this Section 3.08). The Notes shall not be entitled to the benefit of any sinking fund.

Section 3.09 Mandatory Repurchase Offers.

(a) No later than ten (10) Business Days following the date of receipt by Delta or any of its Subsidiaries of any Net Proceeds in respect of any Recovery Event (in each case, in respect of Collateral) which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Recovery Events since the Closing Date, are in excess of $10.0 million (the “RE Threshold Amount”, and all such Net Proceeds in excess of the RE Threshold Amount, “RE Excess Proceeds”), the Issuers shall (i) give written notice to the Trustee of such Recovery Event and (ii) make an offer (an “RE Mandatory Repurchase Offer”) to all Holders to purchase the maximum principal amount of Notes on a pro rata basis that may be purchased out of the Notes’ Pro Rata Share of such RE Excess Proceeds (other than any such RE Excess Proceeds withheld for reinvestment pursuant to the proviso in this clause (a)) (the “RE Mandatory Repurchase Offer Proceeds”); provided that (1) so long as no Event of Default shall have occurred and be continuing at the time of receipt of such RE Excess Proceeds, the Issuers shall have the option to (x) invest such RE Excess Proceeds within 365 days of receipt thereof in Qualified Replacement Assets or (y) repair, replace or restore the assets which are the subject of such Recovery Event; and (2) within ten (10) Business Days of the end of such 365 day period (or earlier if the Issuers so elect), the Issuers shall make an RE Mandatory Repurchase Offer with respect to aggregate amount of such RE Excess Proceeds not used in accordance with the preceding subclause (1).

(b) No later than ten (10) Business Days following the date of receipt by Delta or any of its Subsidiaries of any Net Proceeds in respect of (x) any Collateral Sale of SkyMiles Intellectual Property (other than with respect to any Permitted Pre-paid Miles Purchase or Permitted Disposition) or (y) any Collateral Sale which Net Proceeds (other than with respect to any Permitted Pre-paid Miles Purchase or Permitted Disposition), together with the aggregate amount of Net Proceeds previously received from any such Collateral Sales during the fiscal year in which such date occurs, are in excess of $10.0 million (the “CS Threshold Amount”, and all such Net Proceeds in excess of the CS Threshold Amount together with all Net Proceeds of any Collateral Sale of SkyMiles Intellectual Property, “CS Excess Proceeds”), the Issuers shall make an offer (a “CS Mandatory Repurchase Offer”) to all Holders to purchase the maximum principal amount of each Series of Notes on a pro rata basis that may be purchased out of the Notes’ Pro Rata Share of such CS Excess Proceeds (the “CS Mandatory Repurchase Offer Proceeds”).

(c) No later than ten (10) Business Days of Delta or any of its Subsidiaries receiving any Net Proceeds as a result of any Contingent Payment Event which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Contingent Payment Events since the Closing Date, are in excess of $50.0 million (the “CP Threshold Amount”, and all such Net Proceeds in excess of the CP Threshold Amount, “CP Excess Proceeds”), the Issuers shall make an offer (a “CP Mandatory Repurchase Offer”) to all Holders to purchase the maximum principal amount of each Series of Notes on a pro rata basis that may be purchased out of the Notes’ Pro Rata Share of such CP Excess Proceeds (the “CP Mandatory Repurchase Offer Proceeds”).

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(d) “Mandatory Repurchase Offer” means an RE Mandatory Repurchase Offer, a CS Mandatory Repurchase Offer or a CP Mandatory Repurchase Offer, as applicable. “Applicable Mandatory Repurchase Offer Proceeds” means RE Mandatory Repurchase Offer Proceeds, CS Mandatory Repurchase Offer Proceeds or CP Mandatory Repurchase Offer Proceeds, as applicable.

(e) The Mandatory Repurchase Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the “Mandatory Repurchase Offer Period”). Promptly after the expiration of the Mandatory Repurchase Offer Period (the “Mandatory Repurchase Date”), the Issuers shall apply all of the Applicable Mandatory Repurchase Offer Proceeds to repurchase all of the Notes tendered in the Mandatory Repurchase Offer at a repurchase price equal to 100% of the principal amount being repurchased, plus accrued and unpaid interest thereon to, but excluding the Mandatory Repurchase Date (the “Mandatory Repurchase Offer Price”); provided that if the aggregate Mandatory Repurchase Offer Price for all Notes tendered in such Mandatory Repurchase Offer exceeds the total amount of Applicable Mandatory Repurchase Offer Proceeds, then such tendered Notes shall be repurchased pro rata up to the maximum amount of each Series of Notes that can be repurchased with such Applicable Mandatory Repurchase Offer Proceeds.

(f) If the Mandatory Repurchase Date is on or after a record date and on or before the related Payment Date, any accrued and unpaid interest up to but excluding the Mandatory Repurchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Mandatory Repurchase Offer.

(g) Subject to Section 3.09(a), the Issuers will mail or send electronically pursuant to the Notes Depositary’s Applicable Procedures a notice of Mandatory Repurchase Offer (“Mandatory Repurchase Offer Notices”) to all Holders no later than ten (10) Business Days after the receipt of Net Proceeds therefrom. The Mandatory Repurchase Offer Notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Mandatory Repurchase Offer. The Mandatory Repurchase Offer shall be made to all Holders. The Mandatory Repurchase Offer Notice, which shall govern the terms of the Mandatory Repurchase Offer, shall state:

(i) that the Mandatory Repurchase Offer is being made pursuant to this Section 3.09 and the length of time the Mandatory Repurchase Offer shall remain open;

(ii) the Applicable Mandatory Repurchase Offer Proceeds, the repurchase price and the Mandatory Repurchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;
(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Mandatory Repurchase Offer shall cease to accrue interest after the Mandatory Repurchase Date;

(v) that Holders electing to have a Note purchased pursuant to a Mandatory Repurchase Offer may elect to have Notes purchased in minimum amounts of $2,000 or integral multiples of $1.00 in excess thereof only;

(vi) that Holders electing to have a Note purchased pursuant to any Mandatory Repurchase Offer shall be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Note completed, or transfer by book-entry transfer, to the Issuers, the Notes Depositary, if appointed by the Issuers, or a Paying Agent at the address specified in the notice at least two (2) Business Days before the Mandatory Repurchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Issuers, the Notes Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Mandatory Repurchase Offer Period, a facsimile or other electronic transmission or letter setting forth the name of the Holder, the principal amount of the Notes the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have such Notes purchased;

(viii) that, if the aggregate principal amount of Notes surrendered by the Holders thereof exceeds the amount that can be repurchased with the Applicable Mandatory Repurchase Offer Proceeds, the Trustee shall select the Notes (while the Notes are in global form pursuant to the procedures of the Notes Depositary) to be purchased on a pro rata basis based on the principal amount of the Notes tendered (with such adjustments as may be deemed appropriate by the Issuers so that only Notes in denominations of $2,000, or integral multiples of $1.00 in excess thereof, shall remain outstanding after such purchase) to the extent practicable, or, if the pro rata basis is not practicable for any reason, by lot or by such other method the Trustee considers fair and appropriate and in accordance with methods generally used at the time of selection by indenture trustees in similar circumstances; and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(h) To the extent that the aggregate principal amount of Notes of a Series validly tendered or otherwise surrendered in connection with a Mandatory Repurchase Offer is less than the Applicable Mandatory Repurchase Offer Proceeds, the Issuers may, after purchasing all such Notes of such Series validly tendered and not withdrawn, use the remaining Applicable Mandatory Repurchase Offer Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of the Notes of a Series validly tendered pursuant to any Mandatory Repurchase Offer exceeds the amount that can be repurchased with the Applicable Mandatory Repurchase Offer Proceeds with respect to such Series, the Trustee will allocate the Applicable Mandatory Repurchase Offer Proceeds to purchase Notes of such Series on a pro rata basis on the basis of the aggregate principal amount of tendered Notes of such Series; provided that no Notes will be selected and purchased in an unauthorized denomination. Upon completion of any repurchase of Notes in a Mandatory Repurchase Offer, the amount of Applicable Mandatory Repurchase Offer Proceeds shall be reset at zero.
(i) On or before the Mandatory Repurchase Date, the Issuers shall, to the extent lawful, (1) accept for payment, on a pro rata basis to the extent necessary, the Notes or portions thereof validly tendered pursuant to the Mandatory Repurchase Offer, or if less than the Mandatory Repurchase Offer Price has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer’s Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(j) The Issuers, the Notes Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the repurchase price of the Notes properly tendered by such Holder and accepted by the Issuers for repurchase, and the Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer’s Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; provided, that each such new Note shall be in a minimum denomination of $2,000 or an integral multiple of $1.00 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Issuers to the Holder thereof.

(k) If a portion but not all of a Series of Notes are repurchased, automatically upon such repurchased the remaining applicable Scheduled Principal Amortization Amounts shall be reduced on a pro rata basis to reflect such partial repurchase.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Mandatory Repurchase Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 3.09, the Issuers shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 3.09 by virtue of such compliance.
ARTICLE 4
COVENANTS

Section 4.01 Payment of Notes

Subject to Section 6.02, on each Payment Date on which an Event of Default is not continuing, all Available Funds in the Payment Account as of such Payment Date shall be distributed based upon the relevant payment date statement in the following order of priority:

(a) first, (x) ratably to (i) the Master Collateral Agent and the Depositary, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to such Persons pursuant to the terms of this Indenture and the Collateral Documents and (ii) the Trustee, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Trustee pursuant to the terms of this Indenture, in an amount not to exceed $200,000 in the aggregate per annum and then (y) ratably to the Administrative Agent, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Administrative Agent pursuant to the terms of this Indenture in an amount not to exceed $200,000 in the aggregate per Payment Date and then (z) ratably, the Notes’ Pro Rata Share of the amount of fees, expenses and other amounts due and owing to any Independent Director of any SPV Party, in an amount not to exceed $200,000 in the aggregate per Payment Date, in the case of each of clause (x), (y) and (z), to the extent not otherwise paid or provided for or to the extent such parties have agreed with the Issuers for payment at a later date;

(b) second, to the Trustee, on behalf of the Holders, an amount equal to the Interest Distribution Amount for each Series of Notes with respect to such Payment Date minus the amount of interest paid by the Issuers after the immediately preceding Payment Date and prior to such Payment Date;

(c) third, to the Trustee, on behalf of the Holders, in an amount equal to the Scheduled Principal Amortization Amount due and payable on such Payment Date;

(d) fourth, to the Reserve Account, if the amount on deposit in the Reserve Account is less than the Aggregate Reserve Account Required Balance, the Notes’ Pro Rata Share of such shortfall;

(e) fifth, to the extent not already paid, to the Trustee on behalf of the Holders, the Remitted Amount for any mandatory prepayments required pursuant to Section 3.08;

(f) sixth, after the fifth anniversary of the Closing Date, any “AHYDO catch-up payments” on the Notes;

(g) seventh, without duplication, any premium due and unpaid as of such Payment Date;

(h) eighth, to pay (x) ratably to the Master Collateral Agent, the Depositary, and the Trustee and then (y) to any other Person (other than Delta or any of its Subsidiaries (provided that any payment to the IP Manager pursuant to the IP Management Agreement shall be permitted pursuant to this clause (h)), including any Independent Director of any SPV Party and the IP Manager, any additional Obligations due and payable to such Person on such Payment Date, in the case of clause (x) and (y), to the extent not otherwise paid or provided for or to the extent such parties have agreed with the Issuers for payment at a later date;
(i) ninth, if an Early Amortization Period is in effect as of the last day of the Related Quarterly Reporting Period, then to the Trustee on behalf of the Holders, as a reduction in the outstanding principal balance of the Notes, an amount equal to the Early Amortization Payment for such Payment Date;

(j) tenth, to the extent any amounts are due and owing under any other Priority Lien Debt, to the Master Collateral Agent for further distribution to the appropriate Person pursuant to the Collateral Agency and Accounts Agreement; and

(k) eleventh, all remaining amounts shall be released to or at the direction of Loyalty Co.

For the avoidance of doubt, to the extent Available Funds with respect to any Payment Date are insufficient to pay amounts due under this Indenture to the Agents, Holders or any other Person on such Payment Date, the Issuers, and to the extent provided in Article 10 hereof, the Guarantors, are fully obligated to timely pay such amounts to the Agents, Holders or other Persons.

Section 4.02 Financial Statements, Reports, Etc.

The Issuers shall furnish to the Trustee:

(a) Within (i) ninety (90) days after the end of each fiscal year, Delta’s consolidated balance sheet and related statement of income and cash flows, showing the financial condition of Delta and its Subsidiaries on a consolidated basis as of the close of such fiscal year and the results of their respective operations during such year, the consolidated statement of Delta to be audited for Delta by independent public accountants of recognized national standing and to be accompanied by an opinion of such accountants (which opinion shall be without a “going concern” or like qualification or exception and without any more qualification or exception as to the scope of such audit, except for any such qualification solely as a result of (x) an impending debt maturity within twelve (12) months of the Term Loans or (y) a potential inability to satisfy any financial covenant) to the effect that such consolidated financial statements fairly present in all material respects the financial condition and results of operations of Delta and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that the foregoing delivery requirement shall be satisfied if Delta shall have filed with the SEC its Annual Report on Form 10-K for such fiscal year, via EDGAR or any similar successor system, and (ii) one hundred eighty (180) days after the end of the fiscal year ending December 31, 2020, and within one hundred twenty (120) days after the end of each fiscal year thereafter, the financial statements of HoldCo 1 and its Subsidiaries on a consolidated basis (including cash flows) to be audited for Delta by independent public accountants of recognized national standing and to be accompanied by an opinion of such accountants (which opinion shall be without a “going concern” or like qualification or exception and without any more qualification or exception as to the scope of such audit, except for any such qualification solely as a result of (x) an impending debt maturity within twelve (12) months of the Term Loans or (y) a potential inability to satisfy any financial covenant) to the effect that such financial statements fairly present in all material respects the financial condition and results of operations of HoldCo 1 and its Subsidiaries on a consolidated basis in accordance with GAAP;
(b) Within (i) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year, Delta’s consolidated balance sheets and related statements of income and cash flows, showing the financial condition of Delta and its Subsidiaries on a consolidated basis as of the close of such fiscal quarter and the results of their operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Responsible Officer of Delta as fairly presenting in all material respects the financial condition and results of operations of Delta and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year end audit adjustments and the absence of footnotes; provided that the foregoing delivery requirement shall be satisfied if Delta shall have filed with the SEC its Quarterly Report on Form 10-Q for such fiscal quarter, via EDGAR or any similar successor system and shall have notified the Trustee in writing of such filing, and (ii) sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year beginning on January 1, 2021, financial statements (including cash flows) of HoldCo 1 and its Subsidiaries on a consolidated basis as of the close of such fiscal quarter and the results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Responsible Officer of Delta as fairly presenting in all material respects the financial condition and results of operations of HoldCo 1 and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year end audit adjustments and the absence of footnotes;

(c) Within the time period under Section 4.02(a) above with respect to Delta, a certificate of a Responsible Officer of Delta certifying that, to the knowledge of such Responsible Officer, no Early Amortization Event or Event of Default has occurred and is continuing, or, if, to the knowledge of such Responsible Officer, such an Early Amortization Event or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(d) On or prior to each Determination Date, a certificate of a Responsible Officer demonstrating in reasonable detail compliance with (i) Section 4.27 as of the last day of the preceding Quarterly Reporting Period and (ii) the Peak Debt Service Coverage Ratio Test as of the last day of the preceding Quarterly Reporting Period;

(e) [Reserved];

(f) [Reserved];

(g) Promptly upon knowledge thereof by a Responsible Officer of an Issuer, give to the Trustee notice in writing of any Default, Early Amortization Event or Event of Default;

(h) [Reserved]; and

(i) Subject to any confidentiality restrictions under binding agreements or limitations imposed by applicable law, a notice posted on a password protected website to which the Trustee will have access (or otherwise deliver to the Trustee, including, without limitation, by electronic mail) of (i) any material amendment, restatement, supplement, waiver or other modification to any Material SkyMiles Agreement promptly (but in no case within thirty (30) days) upon the effectiveness of such amendment, restatement, supplement, waiver or other modification and (ii) any termination, cancellation or expiration received or delivered by an Issuer Party with respect to a Material SkyMiles Agreement.
In no event shall the Trustee be entitled to inspect, receive and make copies of materials, (i) except in connection with any enforcement or exercise of remedies, (A) that constitute non registered SkyMiles Intellectual Property, non-financial Trade Secrets (including the SkyMiles Customer Data) or non-financial proprietary information or (B) in respect of which disclosure to the Trustee, the Master Collateral Agent or any Holder (or their respective representatives or contractors) is prohibited by law or any binding agreement (or would otherwise cause a breach or default thereunder) or (ii) that are subject to attorney client or similar privilege or constitute attorney work product or constitute Excluded Intellectual Property. The Issuers agree to provide copies of any notices or any deliverables given or received under the Collateral Agency and Accounts Agreement to the Trustee, including any notice or deliverable required to be provided to the Senior Secured Debt Representatives.

Subject to the next succeeding sentence, information delivered pursuant to this Section 4.02 to the Trustee may be made available by Delta to the Holders by posting such information on a private, restricted website to which Holders, prospective investors, broker-dealers and securities analysts are given access. Information required to be delivered pursuant to this Section 4.02 by any Issuer Party shall be delivered pursuant to Section 12.02 hereto. Information required to be delivered pursuant to this Section 4.02 (to the extent not made available as set forth above) shall be deemed to have been delivered to the Trustee on the date on which Loyalty Co provides written notice to the Trustee that such information has been posted on Delta’s general commercial website (to the extent such information has been posted or is available as described in such notice), as such website may be specified by Loyalty Co to the Trustee from time to time. Information required to be delivered pursuant to this Section 4.02 shall be in a format which is suitable for transmission.

Any notice or other communication delivered pursuant to this Section 4.02, or otherwise pursuant to this Indenture, shall be deemed to contain non-public information unless (i) expressly marked by an Issuer Party as “PUBLIC”, (ii) such notice or communication consists of copies of any Issuer Party’s public filings with the SEC or (iii) such notice or communication has been posted on Delta’s general commercial website, as such website may be specified by Loyalty Co to the Trustee from time to time.

Delivery of reports, information and documents to the Trustee is for informational purposes only, and its receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including any Issuer Party’s or any other Person’s compliance with any of its covenants under this Indenture or any other Notes Document. The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report or other information delivered, filed or posted under or in connection with this Indenture, the other Notes Documents or the transactions contemplated hereunder or thereunder. For the avoidance of doubt, the Trustee shall have no duty to monitor or access any website of an Issuer Party or any other Person referenced herein, shall not have any duty to monitor, determine or inquire as to compliance or performance by any Issuer Party or any other Person of its obligations under this Section 4.02 or otherwise and the Trustee shall not be responsible or liable for any Issuer Party’s or any other Person’s non-performance or non-compliance with such obligations.
Section 4.03 Taxes.

Each Issuer Party shall pay and discharge promptly all taxes, assessments, governmental charges, levies or claims imposed upon it or upon its income or profits or in respect of its property, before the same shall become more than ninety (90) days delinquent, except in each case where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; provided, however, that each Issuer Party shall not be required to pay and discharge or to cause to be paid and discharged any such obligation, tax, assessment, charge, levy or claim so long as (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings and (ii) each Issuer Party shall have set aside on their books adequate reserves therefor in accordance with GAAP.

Section 4.04 [Reserved].

Section 4.05 Corporate Existence.

Each Issuer Party shall preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except (a) if such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and (b) as otherwise permitted in connection with (i) sales of assets not restricted by Section 4.24 or (ii) mergers, liquidations and dissolutions permitted by Section 4.28.

Section 4.06 Compliance with Laws.

Each Issuer Party shall comply with all applicable laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Delta shall maintain in effect policies and procedures reasonably designed to promote compliance by Delta, its Subsidiaries and, when acting in such capacity, their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 4.07 Contribution of SkyMiles Intellectual Property.

Delta shall contribute Intellectual Property and data to Loyalty Co pursuant to the Contribution Agreements from time to time so that at all times Delta and its Subsidiaries (other than Loyalty Co) would not be able to operate the SkyMiles Program in a manner materially consistent with the operation of the SkyMiles Program at such time, or any other similar airline loyalty program (other than a Permitted Acquisition Loyalty Program or Specified Minority Owned Program), without the rights granted to Delta with respect to such SkyMiles Intellectual Property under the IP Licenses.
Section 4.08 Special Purpose Entity.

Other than as required or permitted by the Transaction Documents or the SkyMiles Agreements, the SPV Parties have not and shall not:

(a) engage in any business or activity other than (i) the purchase, receipt, management and sale of Collateral and Excluded Property; provided that in no event shall any SPV Party purchase, receive, manage or sell real property, (ii) the transfer and pledge of Collateral pursuant to the terms of the Collateral Documents and the Priority Lien Debt Documents and the Junior Lien Debt Documents, (iii) the entry into and the performance under the Transaction Documents and SkyMiles Agreements to which it is a party and (iv) such other activities as are incidental thereto;

(b) acquire or own any material assets other than (i) the Collateral and Excluded Property; provided that in no event shall any SPV Party acquire or own real property, or (ii) incidental property as may be necessary or desirable for the operation of any SPV Party and the performance of its obligations under the Transaction Documents and SkyMiles Agreements to which it is a party and (iv) such other activities as are incidental thereto;

(c) except as permitted by this Indenture (i) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets, or (ii) change its legal structure, or jurisdiction of incorporation, unless, in connection with any of the foregoing, such action shall result in the substantially contemporaneous occurrence of the Discharge of Senior Secured Debt Obligations;

(d) except as otherwise permitted under Section 4.08(c), fail to preserve its existence as an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(e) form, acquire or own any Subsidiary, own any Equity Interests in any other entity, or make any Investment in any Person other than to the extent permitted in its memorandum and articles;

(f) except as contemplated in the Senior Secured Debt Documents, commingle its assets with the assets of any of its Affiliates, or of any other Person;

(g) incur any Indebtedness other than (i) Indebtedness to the Senior Secured Parties under this Indenture or in conjunction with a repurchase or redemption of all or a portion of the Notes owed to the Holders, (ii) any other Priority Lien Debt, (iii) any Junior Lien Debt and (iv) ordinary course contingent obligations under or any terms thereof related to the SkyMiles Agreements (such as customary indemnities to fronting banks, administrative agents, collateral agents, depository banks, escrow agents, etc.);

(h) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due in the ordinary course of business;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of any other Person;
(j) enter into any contract or agreement with any Person, except (i) the Transaction Documents to which it is a party and the Priority Lien Debt Documents and the Junior Lien Debt Documents, (ii) organizational documents, (iii) SkyMiles Agreements or other co-branding, partnering or similar agreements, (iv) agreements between any SPV Party and Delta and/or its Subsidiaries substantially consistent with Delta’s arrangements with its other Subsidiaries that (w) terminate upon such SPV Party ceasing to be a Subsidiary of Delta, (x) do not involve the payment of cash to or from such SPV Party, (y) are entered into for the primary purpose of managing the transfer and processing of data among the parties thereto and (z) contain non-petition and nonrecourse covenants with respect to such SPV Party consistent with the provisions set forth in this Indenture, (v) intercompany agreements for loans from Loyalty Co to Delta permitted under Section 4.22, and (vi) other contracts or agreements that (x) are upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm’s-length basis with third parties other than such Person, (y) contain non-petition covenants with respect to such SPV Party consistent with the provisions set forth in this Indenture and (z) contain non-recourse covenants with respect to such SPV Party consistent with the provisions set forth in this Indenture.

(k) seek its dissolution or winding up in whole or in part;

(l) fail to use commercially reasonable efforts to correct promptly any material known misunderstandings regarding the separate identities of any SPV Party, on the one hand, and any Affiliate or any principal thereof or any other Person, on the other hand;

(m) except pursuant to the Transaction Documents, the Priority Lien Debt Documents and the Junior Lien Debt Documents guarantee, become obligated for, or hold itself out to be responsible for the Indebtedness of another Person;

(n) fail, in any material respect, either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business, solely in its own name in order not (i) to mislead others as to the identity of the Person with which such other party is transacting business, or (ii) to suggest that it is responsible for the Indebtedness of any third party (including any of its principals or Affiliates (other than as contemplated or required pursuant to the Transaction Documents));

(o) fail, to the extent of its own funds (taking into account the requirements in the Transaction Documents), to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(p) [reserved];

(q) fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; provided that the SPV Parties’ assets may be included in a consolidated financial statement of its Affiliates so long as (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the SPV Parties from such Person and to indicate that the SPV Parties’ assets and credit are not available to satisfy the Indebtedness and other obligations of such Person or any other Person except for Indebtedness incurred and other obligations pursuant to the Notes Documents, the Priority Lien Debt Documents and the Junior Lien Debt Documents and (ii) such assets shall also be listed on the SPV Parties’ own separate balance sheet (in each case, subject to clause (v) below);
fail to pay its own separate liabilities and expenses only out of its own funds (other than as contemplated under any Director Services Agreement);

maintain, hire or employ any individuals as employees;

acquire the obligations or securities issued by its Affiliates or members (other than (i) any equity interests of another SPV Party that is a Subsidiary of such SPV Party or (ii) intercompany loans permitted under Section 4.22);

fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

pledge its assets to secure the obligations of any other Person other than pursuant to the Notes Documents, the Priority Lien Debt Documents and the Junior Lien Debt Documents;

fail to have such Independent Directors as are required pursuant Section 4.09;

(i) institute proceedings to be adjudicated bankrupt or insolvent, (ii) institute or consent to the institution of bankruptcy, winding up or insolvency proceedings against it, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) seek or consent to the appointment of a receiver, liquidator, provisional liquidator, assignee, trustee, sequestrator, collateral agent or any similar official for any SPV Party, (v) make any general assignment for the benefit of any SPV Party’s creditors, (vi) admit in writing its inability to pay its debts generally as they become due, or (vii) take any corporate action to approve any of the foregoing; or

fail to file its own tax returns separate from those of any other Person, except to the extent that any SPV Party is treated as a disregarded entity for U.S. federal and applicable state and local income tax purposes.

Section 4.09 SPV Party Independent Directors.

No SPV Party shall fail for five (5) consecutive Business Days to have at least the Required Number of Independent Directors (or 30 days in the case of such Independent Director’s death, disability or resignation, provided that in the case of Loyalty Co, one Independent Director remains at Loyalty Co during such period). Each SPV Party agrees that no vote for a “Material Action” (as defined in the constitutional documents of such SPV Party) shall be held unless such SPV Party has the Required Number of Independent Directors at such time, all Required Number of Independent Directors are present for such vote and the affirmative vote of all Independent Directors is required for such SPV Party to take such “Material Action”.

Section 4.09

SPV Party Independent Directors.

No SPV Party shall fail for five (5) consecutive Business Days to have at least the Required Number of Independent Directors (or 30 days in the case of such Independent Director’s death, disability or resignation, provided that in the case of Loyalty Co, one Independent Director remains at Loyalty Co during such period). Each SPV Party agrees that no vote for a “Material Action” (as defined in the constitutional documents of such SPV Party) shall be held unless such SPV Party has the Required Number of Independent Directors at such time, all Required Number of Independent Directors are present for such vote and the affirmative vote of all Independent Directors is required for such SPV Party to take such “Material Action”. 
Section 4.10 Regulatory Matters; Citizenship; Utilization; Collateral Requirements.

Delta shall:

(a) maintain at all times its status as an “air carrier” within the meaning of Section 40102(a)(2) of Title 49, and hold a certificate under Section 41102(a)(1) of Title 49;

(b) be a “citizen of the United States” as defined in Section 40102(a)(15) of Title 49 and as that statutory provision has been interpreted by the U.S. Department of Transportation pursuant to its policies; and

(c) maintain at all times its status at the FAA as an “air carrier” and hold an air carrier operating certificate under Section 44705 of Title 49 and operations specifications issued by the FAA pursuant to Parts 119 and 121 of Title 14 as currently in effect or as may be amended or recodified from time to time.

Section 4.11 Collateral Ownership.

Subject to the provisions described (including the actions permitted) under this Article 4, each Grantor shall continue to maintain its interest in and right to use all property and assets so long as such property and assets constitute Collateral, except as would not reasonably be expected to result in a Material Adverse Effect.

Section 4.12 Guarantors; Grantors; Collateral.

(a) Delta shall take, and cause each Guarantor to take, such actions as are necessary in order to ensure that the obligations of the Issuer Parties hereunder and under the other Notes Documents are guaranteed by all Guarantors.

(b) Delta and Loyalty Co shall, in each case at their own expense, (A) cause HoldCo 3 to become a Grantor and to become a party to each applicable Collateral Document and all other agreements, instruments or documents that create or purport to create and perfect a first priority Lien (subject to Permitted Liens) in favor of the Master Collateral Agent for the benefit of the Senior Secured Parties in substantially all of its assets (other than Excluded Property), subject to and in accordance with the terms, conditions and provisions of the Notes Documents (it being understood that only Loyalty Co and HoldCo 3 shall be required to become Grantors and pledge their respective Collateral), (B) promptly execute and deliver (or cause such Grantor to execute and deliver) to the Trustee and the Collateral Administrator such documents and take such actions to create, grant, establish, preserve and perfect the applicable priority Liens (subject to Permitted Liens) (including to obtain any release or termination of Liens not permitted under Section 4.25 and the filing of UCC financing statements, as applicable) in favor of the Master Collateral Agent for the benefit of the Senior Secured Parties on such assets of any Grantor to secure the Obligations to the extent required under the applicable Collateral Documents or reasonably requested by the Trustee or the Master Collateral Agent, and to ensure that such Collateral shall be subject to no other Liens other than Permitted Liens and (C) if reasonably requested by the Trustee, deliver to the Trustee, for the benefit of the Senior Secured Parties, the Trustee, the Master Collateral Agent, the Collateral Administrator and the Depositary, a customary written Opinion of Counsel to such Grantor, as applicable, with respect to the matters described in clauses (A) and (B) hereof, in each case within twenty (20) Business Days after the addition of such Collateral.

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(c) Notwithstanding anything in this Indenture to the contrary, a supplemental indenture effecting a Note Guarantee pursuant to the terms of this Indenture following the Closing Date may be modified in respect of any Guarantor organized outside the United States of America to the extent necessary to (1) comply with applicable law, (2) avoid any applicable legal limitations such as applicable statutory limitations, financial assistance requirements, corporate benefit requirements, “thin capitalization” rules, retention of title claims or similar matters or (3) avoid a conflict with the fiduciary duties of such company’s directors, contravention of any legal prohibition or regulatory condition, or the material risk of personal or criminal liability for any officers or directors (collectively referred to as “Agreed Guarantee Principles”), in each case as determined by Delta in good faith in its reasonable discretion.

Section 4.13 [Reserved].

Section 4.14 Further Assurances.

(a) In each case, subject to the terms, conditions and limitations in the Notes Documents, each Issuer Party shall execute any and all further documents and instruments, and take all further actions, that may be required or advisable under applicable law or that the Master Collateral Agent may reasonably request, in order to create, grant, establish, preserve, protect and perfect the validity, perfection and priority of the Liens and security interests created or intended to be created by the Collateral Documents, in each case to the extent required under this Indenture or the Collateral Documents.

(b) [Reserved].

(c) Promptly after the date upon which it is permissible to transfer and assign any Specified Intellectual Property, the Issuer Parties shall, if such Specified Intellectual Property is not transferred and assigned pursuant to an existing Contribution Agreement, execute and deliver one or more Contribution Agreements together with all further documents and instruments that may be required and advisable, and take all further actions that may be required or advisable under applicable law or that the Master Collateral Agent may reasonably request, to transfer and assign all of the Issuer Parties’ right, title and interest in and to such Specified Intellectual Property to Loyalty Co, and shall promptly provide the Trustee and the Master Collateral Agent copies of any such documents.

Section 4.15 Maintenance of Rating.

The Issuer Parties shall use commercially reasonable efforts to cause the Notes to be continuously rated by at least two (2) of the Rating Agencies that initially rated the Notes but shall not be required to obtain any specific rating. The Issuer Parties shall make commercially reasonable efforts to provide such Rating Agencies (at Delta’s sole expense) such reports, records and documents as each shall reasonably request to monitor or affirm such ratings, except to the extent the disclosure of any such document or any such discussion would result in the violation of any Issuer Party’s contractual (including all confidentiality obligations set forth in the SkyMiles Agreements) or legal obligations; provided that the Issuer Parties’ failure to obtain such a rating after using commercially reasonable efforts shall not constitute an Event of Default.
Section 4.16  SkyMiles Program; SkyMiles Agreements.

(a) The Issuer Parties (as applicable) agree to honor Miles according to the policies and procedures of the SkyMiles Program except to the extent that would not reasonably be expected to cause a Payment Material Adverse Effect.

(b) Each Issuer Party shall take any action permitted under the SkyMiles Agreements and applicable law that it, in its reasonable business judgment, determines is advisable, in order to diligently and promptly (i) enforce its rights and any remedies available to it under the SkyMiles Agreements, (ii) perform its obligations under the SkyMiles Agreements and (iii) cause the applicable counterparties to perform their obligations under the related SkyMiles Agreements, including such counterparties’ obligations to make payments to and indemnify the applicable Issuer Parties in accordance with the terms thereof in each case except as would not reasonably be expected to result in a Payment Material Adverse Effect.

(c) Neither Delta nor Loyalty Co shall substantially reduce the SkyMiles Program business or modify the terms of the SkyMiles Program in any manner that would reasonably be expected to result in a Payment Material Adverse Effect.

(d) Delta shall not and shall not permit any of its Subsidiaries to change the policies and procedures of the SkyMiles Program in any manner that would reasonably be expected to result in a Payment Material Adverse Effect.

(e) Delta shall not and shall not permit any of its Subsidiaries to establish, create, or operate any Loyalty Program, other than a Permitted Acquisition Loyalty Program or a Specified Minority Owned Program, unless substantially all such Loyalty Program cash revenues (which excludes, for the avoidance of doubt, airline revenues such as ticket sales and baggage fees), accounts in which such cash revenue is deposited, Intellectual Property and member data (but solely to the extent that such Intellectual Property and member data would be included in the definition of SkyMiles Intellectual Property, substituting references to the SkyMiles Program with references to such other Loyalty Program), and material third-party contracts and intercompany agreements, related to such Loyalty Program are transferred and held at Loyalty Co or a subsidiary thereof and pledged as Collateral on a first lien basis (except to the extent such revenues and assets constitute Excluded Property), subject to third-party rights and Permitted Liens; provided that, for the avoidance of doubt, nothing shall prohibit Delta or any of its Subsidiaries from offering and providing discounts or other incentives (other than any Currency) for travel or carriage on Delta.

(f) The Issuer Parties agree that, with respect to each SkyMiles Agreement entered into after the Closing Date (i) Loyalty Co shall be party to such SkyMiles Agreement and (ii) such SkyMiles Agreement shall (x) provide that payment made by the counterparty thereunder shall be made to Loyalty Co and deposited directly into the Collection Account and (y) permit Loyalty Co to grant a Lien on such SkyMiles Agreement to secure the Obligations.

(g) Notwithstanding anything to the contrary, with respect to any Permitted Acquisition Loyalty Program, each Issuer Party shall be permitted to undertake any of the following actions at any time after such actions are permitted under the Material SkyMiles Agreements and applicable law:
(i) terminate the Permitted Acquisition Loyalty Program;

(ii) merge and consolidate the Permitted Acquisition Loyalty Program into the SkyMiles Program; or

(iii) cause the Permitted Acquisition Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees) to be pledged as Collateral.

(h) For the avoidance of doubt, (i) until it is merged into or consolidated with the SkyMiles Program, any Permitted Acquisition Loyalty Program shall not be deemed part of the SkyMiles Program, its co-branding, partnering or similar agreements shall not constitute SkyMiles Agreements, and its customer data shall not constitute SkyMiles Customer Data and (ii) following a merger or consolidation of the Permitted Acquisition Loyalty Program into the SkyMiles Program, (A) none of the restrictions described in the definition of “Permitted Acquisition Loyalty Program” will continue to apply to the merged program, (B) the co-branding, partnering or similar agreements related to or entered into in connection with the Permitted Acquisition Loyalty Program shall become SkyMiles Agreements and (C) all rights, title and interest therein and the Permitted Acquisition Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees) must be promptly pledged as Collateral.

(i) The Issuer Parties agree that if, as of any Determination Date, the aggregate amount of cash revenues attributable to the Retained Agreements for the preceding four Quarterly Reporting Periods (or, in the case of the first three Quarterly Reporting Periods, since the Closing Date) are greater than or equal to 5.0% of the SkyMiles Revenues for such period, (i) Delta shall promptly transfer (or cause to be transferred) its rights, title and interest in, to and under one or more Retained Agreements to Loyalty Co such that the aggregate amount of cash revenues produced by the Retained Agreements not so transferred is less than 5.0% of the SkyMiles Revenues in such period (on a pro forma basis) and (ii) upon the effectiveness of such transfer, such Retained Agreement(s) shall become SkyMiles Agreement(s).

(j) Loyalty Co shall have the exclusive right to issue Miles in connection with the SkyMiles Program, including any Miles purchased by Delta, SkyMiles Program members or any other third parties pursuant to SkyMiles Agreements, Retained Agreements, Delta Air Line Business Agreements or otherwise from Loyalty Co, Delta or any of its Affiliates, and neither Delta nor any of its Affiliates (other than Loyalty Co) shall engage in such activities. Delta shall purchase Miles from Loyalty Co in order to comply with its obligations under the SkyMiles Agreements, the Retained Agreements and the Delta Air Line Business Agreements. Loyalty Co shall issue Miles purchased by Delta in accordance with the Intercompany Agreements.

Section 4.17 [Reserved].

Section 4.18 [Reserved].
Section 4.19 Collections; Releases from Collection Account.

(a) Delta and Loyalty Co shall instruct and use commercially reasonable efforts to cause sufficient counterparties to SkyMiles Agreements to direct payments of Transaction Revenue into the Collection Account such that in any Quarterly Reporting Period, at least 90% of SkyMiles Revenues are deposited directly into the Collection Account.

(b) To the extent any Issuer Party or any of their controlled Affiliates receives any payments of Transaction Revenue to an account other than the Collection Account, such Person shall cause such amounts to be deposited into the Collection Account within three (3) Business Days after receipt and identification thereof.

(c) Delta and HoldCo 3 shall make, and Loyalty Co shall ensure that, all payments payable to Loyalty Co pursuant to the Intercompany Agreements and the IP Licenses are made directly into the Collection Account.

Section 4.20 Mandatory Prepayments or Repurchases.

To the extent not applied in accordance with Section 3.08 or Section 3.09, the Issuers shall cause an amount equal to the Net Proceeds from all transactions that result in mandatory prepayments or repurchases pursuant to the terms of Section 3.08 or Section 3.09 to be deposited promptly into the Collection Account, which amounts shall be applied in accordance with the terms of Section 4.01.

Section 4.21 Privacy and Data Security.

Except as would not reasonably be expected to result in a Material Adverse Effect, each applicable Issuer or Guarantor shall maintain in effect commercially reasonable privacy and data security policies. Without limiting the generality of the foregoing, except as would not reasonably be expected to result in a Material Adverse Effect, each applicable Issuer and Guarantor shall comply in all material respects, and shall cause each of its Subsidiaries and each of its Third-Party Processors to be in compliance in all material respects, with (i) all internal privacy policies and privacy policies contained on any websites maintained by or on behalf of each such Issuer Party or such Subsidiary and such policies are consistent with the actual practices of such entity, (ii) all Data Protection Laws with respect to Personal Data, including Data Protection Laws anywhere in the United States, the State of California, the Cayman Islands, the United Kingdom and the European Union and (iii) its contractual commitments and obligations regarding Personal Data.

Section 4.22 Restricted Payments.

(a) The SPV Parties shall not, directly or indirectly:

(i) declare or pay any dividend or make any other payment or distribution on account of any SPV Party’s Equity Interests (including, without limitation, any payment in connection with any merger or consolidation) or to the direct or indirect holders of any SPV Party’s Equity Interests in their capacity as such;
purchase, redeem or otherwise acquire or retire for value any Equity Interests of any SPV Party; or

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness other than the Priority Lien Debt; or

(iv) make any Restricted Investment,

(all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as “Restricted Payments”), other than solely with respect to:

1. Restricted Payments (including the making of any intercompany loans, any payments in respect of intercompany debt or Junior Lien Debt or any payments with respect to Indebtedness in the nature of an “AHYDO catch up” payment with respect to any Indebtedness that constitutes an applicable high yield discount obligation) with amounts released to Loyalty Co under Section 4.01(k) or pursuant to Section 2.11 of the Collateral Agency and Accounts Agreement; and

2. (i) the distribution of the proceeds of the Term Loans and the Notes from Loyalty Co to HoldCo 3, (ii) the subsequent distribution of the proceeds of the Term Loans and the Notes from HoldCo 3 to HoldCo 2, and (iii) the making of the Delta Intercompany Loan, in each case, on the Closing Date;

provided that notwithstanding anything to the contrary in this Indenture, other than funds released to Loyalty Co pursuant to clause (vi) of the priority of payments in Section 6.02, no SPV Party shall be permitted to make any Restricted Payment at any time when an Event of Default has occurred and is continuing.

Section 4.23  Incurrence of Indebtedness and Issuance of Preferred Stock.

The SPV Parties shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to any Indebtedness other than the following (and Delta shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to any Indebtedness with respect to any Pre-paid Miles Purchase other than as set forth in clause (b) below):

(a) Junior Lien Debt, provided that (i) prior to the incurrence of such Junior Lien Debt, the Rating Agency Condition shall have been satisfied, (ii) no Event of Default or Early Amortization Event shall have occurred and be continuing or would result from the issuance of such Junior Lien Debt, (iii) to the extent that immediately after giving effect to the issuance of such Junior Lien Debt the aggregate outstanding amount of Junior Lien Debt would exceed $1.0 billion, the ratio of (A) (I) the aggregate outstanding amount of Junior Lien Debt (including such Junior Lien Debt being then issued) plus (II) the greater of (x) the then-outstanding principal amount of Priority Lien Debt and (y) the Priority Lien Cap divided by (B) the sum of (x) the aggregate amount of Transaction Revenue received during the period of four consecutive Quarterly Reporting Periods ending on the most recent Determination Date, and (y) Cure Amounts transferred to the Collection Account pursuant to Section 4.33 in connection with such Determination Date shall not exceed 1.60 to 1.00 on a pro forma basis and (iv) such Junior Lien Debt shall not be incurred by or subject to a guarantee by any Subsidiary of Delta other than any SPV Party;
(b) Pre-paid Miles Purchases, so long as (i) the aggregate amount of Miles purchased in Pre-paid Miles Purchases or other Indebtedness incurred with respect to Pre-paid Miles Purchases does not exceed an amount equal to the quotient of (x) $550.0 million divided by (y) the rate by which such Person purchases Miles from Delta as in effect on the Closing Date, (ii) such sale is non-refundable and non-recourse to the SPV Parties, (iii) the Indebtedness related thereto is unsecured or secured by assets of Delta or its subsidiaries (other than the SPV Parties) that do not constitute Collateral and (iv) no Early Amortization Period or Event of Default is continuing at the time of such sale or would result therefrom;

(c) Indebtedness represented by (1) the Notes issued and outstanding as of the Closing Date, and the Note Guarantees related thereto, (2) the Term Loans outstanding on the Closing Date, and the related Guarantees by the Guarantors thereof, and (3) additional Indebtedness incurred under the Credit Agreement, the Indenture or another indenture; provided that (i) any such Indebtedness (other than with respect to Section 4.23(c)(A) and (B), customary bridge loans which, subject only to customary conditions (which shall be limited to no payment or bankruptcy event of default) would either automatically be converted into or required to be exchanged for long-term refinancing in the form of debt securities issued under an indenture or incremental term loans under the Credit Agreement, as applicable, permitted under (and subject to the requirements of) Section 4.23(c)(A) and (B) and each other provision of this Section 4.23(c)), (A) shall have a maturity date not earlier than the Latest Maturity Date then in effect, (B) shall have a Weighted Average Life to Maturity thereof no shorter than the remaining Weighted Average Life to Maturity of the Notes outstanding (in the case of additional Notes to be issued under this Indenture or debt securities to be issued under an indenture) or the Credit Agreement (in the case of Indebtedness to be incurred under the Credit Agreement), and (C) shall not be subject to or benefit from any Guarantee by any Person other than an Issuer or Guarantor, (ii) after giving effect to the issuance of such Indebtedness, the outstanding principal amount of the Priority Lien Debt shall not exceed the Priority Lien Cap (plus, fees, expenses, premium and accrued interest in respect of any Indebtedness incurred pursuant to this Section 4.23(c) which refinances other Indebtedness of Loyalty Co permitted under this Indenture), (iii) prior to the issuance of any additional Indebtedness after the initial issuance on the Closing Date, the Rating Agency Condition shall have been satisfied, and (iv) in the case of the issuance of any additional Indebtedness issued in a Capital Markets Offering after the initial issuance of the Notes, the terms and conditions governing such Indebtedness shall be substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by Loyalty Co) to the investors or holders providing such Indebtedness than those applicable to the Notes under this Indenture (except to the extent such terms are (I) conformed (or added) in the Notes Documents for the benefit of the Holders of the Notes pursuant to a supplemental indenture or (II) applicable solely to periods after the latest final maturity date of the Notes existing at the time of such incurrence); provided that notwithstanding the foregoing, in no event shall such Indebtedness be subject to events of default resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the Notes, (v) no Event of Default or Early Amortization Event shall have occurred and be continuing or would result from the issuance of such Indebtedness and (vi) other than in the case of Indebtedness incurred on the Closing Date, the pro forma Peak Debt Service Coverage Ratio (calculated using the Maximum Quarterly Debt Service of the then existing Term Loans, the Notes and other Indebtedness previously incurred pursuant to this Section 4.23(c)) as of the immediately preceding Determination Date, immediately after giving effect to the issuance of such Indebtedness shall be more than (i) for any date of determination prior to the Determination Date occurring in July 2022, 1.50 to 1.00, (ii) for any date of determination during the period beginning on or after the Determination Date occurring in July 2022 but excluding the Determination Date occurring in January 2023, 1.75 to 1.00 and (iii) for any date of determination occurring on or after the Determination Date in January 2023, 2.25 to 1.00;
(d) Indebtedness arising from customary indemnification or other similar obligations under the Notes Documents and the other agreements entered into on the Closing Date in connection therewith (or replacements or amendments thereto which are permitted under this Indenture); and

(e) Indebtedness otherwise permitted under Section 4.25.

Section 4.24 Disposition of Collateral.

No Issuer Party shall sell or otherwise Dispose of any Collateral (or, in the case of any SPV Party, any of its property or assets (including the Collateral)), including by way of any Sale of a Grantor, except for (i) a Permitted Disposition, (ii) Permitted Pre-paid Miles Purchases in an aggregate amount not to exceed $550.0 million or (iii) any other sale or Disposition (other than a Sale of a Grantor) of assets having a Fair Market Value in an aggregate amount not to exceed $25.0 million in any fiscal year; provided that, for the avoidance of doubt, it is acknowledged and agreed that Delta is not a Grantor.

Section 4.25 Liens.

No Issuer Party shall directly or indirectly create, incur, assume or suffer to exist any Lien of any kind on any property or asset that constitutes Collateral or any Equity Interests in any SPV Party, in each case other than Permitted Liens; provided that, for the avoidance of doubt, it is acknowledged and agreed that Delta is not a Grantor hereunder. No SPV Party shall directly or indirectly create, incur, assume or suffer to exist any Lien of any kind on any of its property or assets (including the Collateral) other than Permitted Liens.

Section 4.26 Business Activities.

The SPV Parties shall not engage in any business other than Permitted Businesses.

Section 4.27 Minimum Liquidity.

Delta shall not, at the close of any Business Day, permit the sum of (i) the aggregate amount of Unrestricted Cash and (ii) the aggregate principal amount committed and available to be drawn by Delta under all revolving credit facilities of Delta to be less than $2,000,000,000.
Section 4.28 Merger, Consolidation, or Sale of Assets.

(a) Delta shall not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) unless:

1. immediately after giving effect thereto no Early Amortization Event, Default or Event of Default shall have occurred and be continuing;

2. Delta is the surviving corporation or, if otherwise, (x) such other Person or continuing corporation (the “Successor Company”) shall (A) be an “air carrier” within the meaning of Section 40102(a)(2) of Title 49, and hold a certificate under Section 41102(a)(1) of Title 49; (B) be a United States Citizen; (C) be an air carrier and hold an air carrier operating certificate and other operating authorizations issued by the FAA pursuant to 14 C.F.R. Parts 119 and 121 as currently in effect or as may be amended or recodified from time to time; and (D) except as specifically permitted herein or in the Collateral Documents, possess all necessary certificates, exemptions, franchises, licenses, permits, designations, rights, concessions, authorizations, frequencies and consents which are material to the conduct of its business and operations as currently conducted, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and

3. in the case of a Successor Company, the Successor Company shall (A) execute, prior to or contemporaneously with the consummation of such transaction, such agreements, if any, as are in the reasonable opinion of the Trustee, necessary to evidence the assumption by the Successor Company of liability for all of the obligations of Delta hereunder and under the other Notes Documents and (B) cause to be delivered to the Trustee such legal opinions (which may be from in-house counsel) as any of them may reasonably request in connection with the matters specified in the preceding clause (A) and (C) provide such information as the Trustee reasonably requests in order to perform its “know your customer” due diligence with respect to the Successor Company.

Upon any transaction in accordance with this Section 4.28(a) in any case in which Delta is not the surviving corporation, the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, Delta under this Indenture with the same effect as if such Successor Company had been named as “Delta” herein. No such transaction shall have the effect of releasing Delta or any Successor Company which theretofore shall have become a successor to Delta in the manner prescribed in this Section 4.28(a) from its liability with respect to any Notes Document to which it is a party.

(b) Delta shall not liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution).
(c) No SPV Party shall: (i) consolidate or merge with or into another Person, or permit any other Person to merge into or consolidate with it, or (ii) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of its properties, in one or more related transactions, to another Person.

Section 4.29 [Reserved].

Section 4.30 [Reserved].

Section 4.31 Intellectual Property.

(a) The Issuer Parties shall not terminate, amend, waive, supplement or otherwise modify any IP Agreement or any provision thereof, or exercise any right or remedy under or pursuant to or under any IP Agreement, in each case, without the prior written consent of the Permitted Noteholders for each Series of Notes if such termination, amendment, waiver, supplement or modification or exercise of remedies would reasonably be expected to result in a Material Adverse Effect; provided, that (i) termination of any IP Agreement or any amendment to the termination provisions thereof, or (ii) any amendment to an IP Agreement that (A) materially and adversely affects rights to the SkyMiles Intellectual Property or rights to use the SkyMiles Intellectual Property or in the case of the Contribution Agreements, rights to or rights to use other applicable Collateral, (B) shortens the scheduled term thereof, (C) in the case of any IP License, materially and adversely changes the amount or calculation of the termination payment, or the amount, calculation or rate of fees due and owing thereunder, (D) changes the contractual subordination of payments thereunder in a manner materially adverse to Holders, (E) reduces the frequency of payments thereunder to an SPV Party or permits payments due to an SPV Party thereunder to be deposited to an account other than the Collection Account, (F) changes the amendment standards applicable to such IP Agreement (other than changes affecting rights of the Trustee or the Master Collateral Agent to consent to amendments, which is covered by the following clause (G)) in a manner that would reasonably be expected to result in a Material Adverse Effect or (G) materially impairs the rights of the Trustee or the Master Collateral Agent to enforce or consent to amendments to any provisions thereof in accordance therewith shall, in each case, be deemed to have a Material Adverse Effect.

(b) Any assignment, pursuant to a Contribution Agreement, of SkyMiles Intellectual Property registered in the United States shall be filed in the applicable intellectual property office on or before the date that is thirty (30) days after the Closing Date (as extendable automatically for not more than thirty (30) days without further consent to the extent the Issuers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Issuers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree in its reasonable discretion. Any assignment, pursuant to a Contribution Agreement, of SkyMiles Intellectual Property registered outside the United States shall be filed in the applicable intellectual property office on or before the date that is one hundred and eighty (180) days after the Closing Date (as extended automatically without further consent to the extent the Issuers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of applicable law or the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Issuers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree.
(d) On or before the Closing Date, Delta shall segregate, compile and host, and thereafter Delta shall maintain, current and future SkyMiles Customer Data in a database (the “SkyMiles Customer Database”) separate from the database containing any data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or any of its Subsidiaries (other than the SkyMiles Customer Data); provided that Dated SkyMiles Member Profile Data may be commingled with other data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or any of its Subsidiaries that is held in an archival format (such commingled Dated SkyMiles Member Profile Data, “Archived SkyMiles Member Profile Data”); and further provided that Delta shall not be required to remove or segregate any Delta Traveler Related Data contained in the SkyMiles Customer Database. Any Archived SkyMiles Member Profile Data shall continue to be subject to the security interest granted under the Collateral Documents. The SkyMiles Customer Database shall be property of Loyalty Co and subject to the lien granted under the Collateral Documents.

(e) With respect to Composite Marks registered in the United States, Delta shall, on or before the date that is thirty (30) days after the Closing Date (as extended automatically for not more than thirty (30) days without further consent to the extent the Issuers are diligently pursuing satisfaction of the terms of this Indenture, but such completion has been delayed as a result of the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Issuers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree, make the necessary filings with the applicable intellectual property office to expressly cancel (or the equivalent) such registrations. With respect to Composite Marks registered in jurisdictions outside the United States, Delta shall, on or before the date that is one hundred and eighty (180) days after the Closing Date (as extended automatically without further consent to the extent the Issuers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of applicable law or the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Issuers), make the necessary filings with the applicable intellectual property office to expressly cancel (or the equivalent) such registrations; provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree.

Section 4.32 Specified Organization Documents.

No Issuer Party shall amend, modify or waive any SPV Provision of any Specified Organization Document. No Issuer Party shall amend, modify or waive any other provision of any Specified Organization Document in a manner materially adverse to the Holders.
Section 4.33 **Peak Debt Service Coverage Ratio Cure.**

To the extent that Collections received in the Collection Account with respect to any Quarterly Reporting Period are insufficient to satisfy the Peak Debt Service Coverage Ratio Test for such Quarterly Reporting Period (the “Shortfall Period”), at any time prior to the related Determination Date the Issuers may deposit, or cause to be deposited into the Collection Account, funds in an amount necessary to satisfy the Peak Debt Service Coverage Ratio Test for such Shortfall Period (such amounts, the “Cure Amounts”); provided that (x) deposits made pursuant to this Section 4.33 shall not occur more than five (5) times in the aggregate prior to the final maturity date of the 2028 Notes and no more than two times in any twelve (12) month period. To the extent such Cure Amounts are received in the Collection Account on or prior to the Determination Date with respect to the Shortfall Period in accordance with this Section 4.33 will be treated as Collections for purposes of the Peak Debt Service Coverage Ratio Test for the Shortfall Period and (z) amounts deposited in the Collection Account after such Determination Date and designated as Cure Amounts by the Issuers shall be treated as Collections for the Quarterly Reporting Period in which such funds were deposited and shall not be included in the Peak Debt Service Coverage Ratio Test for the Shortfall Period.

Section 4.34 **Offer to Repurchase Upon Parent Change of Control.**

(a) If a Parent Change of Control Triggering Event occurs, each Holder of Notes shall have the right to require the Issuers to repurchase all or any part of that Holder’s Notes pursuant to an offer (a “Parent Change of Control Offer”) at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest on the Notes repurchased to the date of repurchase (the “Parent Change of Control Payment”), subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant Payment Date. Within thirty (30) days following any Parent Change of Control Triggering Event, the Issuers shall mail or send electronically pursuant to the Notes Depositary’s Applicable Procedures a notice to each Holder and the Trustee describing the transaction or transactions that constitute the Parent Change of Control Triggering Event and offering to repurchase Notes on the date specified in the notice (the “Parent Change of Control Payment Date”), which date will be no earlier than thirty (30) days and no later than sixty (60) days from the date such notice is mailed or sent electronically pursuant to the Notes Depositary’s Applicable Procedures, pursuant to the procedures required by this Indenture and described in such notice and stating:

(i) that the Parent Change of Control Offer is being made pursuant to this Section 4.34 and that all Notes validly tendered and not validly withdrawn will be accepted for payment;

(ii) the purchase price and the Parent Change of Control Payment Date;

(iii) that any Note not tendered will continue to accrue interest;

(iv) that, unless the Issuers default in the payment of the Parent Change of Control Payment, all Notes accepted for payment pursuant to the Parent Change of Control Offer will cease to accrue interest after the Parent Change of Control Payment Date;
that Holders of Notes electing to have any Notes purchased pursuant to a Parent Change of Control Offer will be required to surrender the Notes, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer such Notes by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Parent Change of Control Payment Date; and

that Holders of Notes will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Parent Change of Control Payment Date, a facsimile or other electronic transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing its election to have the Notes purchased.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Parent Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.34, the Issuers shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.34 by virtue of such compliance. The Issuers shall provide a copy of such notice to the Trustee.

(b) On the Parent Change of Control Payment Date, the Issuers shall, to the extent lawful:

(i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Parent Change of Control Offer;

(ii) deposit with the paying agent an amount equal to the Parent Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(iii) deliver or cause to be delivered to the trustee the Notes properly accepted together with an Officer’s Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuers.

(c) The paying agent shall promptly mail or otherwise pay in accordance with this Indenture and the Notes Depositary’s Applicable Procedures to each Holder of Notes properly tendered the Parent Change of Control Payment for the Notes, and the Issuers shall issue and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new note equal in principal amount to any unpurchased portion of the Notes surrendered, if any. The provisions described above that require the Issuers to make a Parent Change of Control Offer following a Parent Change of Control will be applicable whether or not any other provisions of this Indenture are applicable.

(d) The Issuers will not be required to make a Parent Change of Control Offer upon a Parent Change of Control Triggering Event if (1) a third party makes the Parent Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Parent Change of Control Offer made by the Issuers and purchases all Notes properly tendered and not withdrawn under the Parent Change of Control Offer, or (2) notice of redemption with respect to all Notes has been given pursuant to Section 3.07 unless and until there is a default in payment of the applicable redemption price; and a Parent Change of Control Offer may be made in advance of a Parent Change of Control, conditioned upon the consummation of such Parent Change of Control, if a definitive agreement is in place for the relevant Parent Change of Control at the time the Parent Change of Control Offer is made. If a Parent Change of Control Triggering Event occurs at a time when the Issuers are prohibited, by the terms of any of their indebtedness, from purchasing the Notes, the Issuers may seek the consent of their lenders to the purchase of the Notes or may attempt to refinance the borrowings that contain such prohibition. If the Issuers do not obtain such a consent or repay such borrowings, they would remain prohibited from purchasing the Notes. For the avoidance of doubt, the Issuers’ failure to offer to purchase the Notes shall constitute an Event of Default under Section 6.02(a)(iii) and not Section 6.02(a)(i), but the failure of the Issuers to pay the Parent Change of Control Payment when due shall constitute an Event of Default under Section 6.02(a)(i).
If Holders of not less than 90% in aggregate principal amount of the outstanding Notes of a Series validly tender and do not withdraw the Notes in a Parent Change of Control Offer and the Issuers, or any third party making a Parent Change of Control Offer in lieu of the Issuers, purchase all of such Notes validly tendered and not withdrawn by such Holders, the Issuers shall have the right, upon not less than twenty (20) nor more than sixty (60) days’ prior notice, given not more than thirty (30) days following such purchase pursuant to the Parent Change of Control Offer described above, to redeem all Notes of such Series that remain outstanding following such purchase at a redemption price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to but not including the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest on the relevant interest payment date).

If a portion but not all of a Series of Notes are repurchased, automatically upon such repurchase the remaining applicable Scheduled Principal Amortization Amounts shall be reduced on a pro rata basis to reflect such partial repurchase.

Section 4.35 Maintenance of Office or Agency.

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

(b) The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof; provided, that no service of legal process on the Issuers or any Guarantor may be made at any office of the Trustee.
ARTICLE 5
[RESERVED]

ARTICLE 6

EARLY AMORTIZATION, DEFAULTS AND REMEDIES

Section 6.01 Early Amortization.

(a) The occurrence of any of the following shall constitute an “Early Amortization Event”:

(i) the Peak Debt Service Coverage Ratio Test is not satisfied on any Determination Date;

(ii) the balance in the Reserve Account is less than the Aggregate Reserve Account Required Balance on any Payment Date after giving effect to the deposits set forth in Section 4.01 on such Payment Date;

(iii) an Issuer has received written notice or has actual knowledge that an Event of Default shall have occurred under this Indenture or any other Senior Secured Debt Document; or

(iv) an Issuer has received written notice or has actual knowledge that an “Early Amortization Event” shall have occurred under any Indebtedness incurred or issued after the Closing Date pursuant to and in accordance with Section 4.23(c).

(b) Promptly upon knowledge thereof by a Responsible Officer of Delta or Loyalty Co, the Issuers shall give to the Trustee notice in writing of an Early Amortization Event.

Section 6.02 Events of Default.

(a) Each of the following is an “Event of Default”:

(i) default in any payment of

(A) any principal amount or premium, if any, on any of the Notes of a Series when such amount becomes due and payable;
any interest on the Notes of a Series and such default shall have continued for a period of more than five (5) Business Days; or

any other amount payable under this Indenture when due and such default shall have continued unremedied for more than ten (10) Business Days after the earlier of (y) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such default or (z) receipt by an Issuer of notice from the Trustee of such default; provided that, if any default shall have been made by any Issuer or Guarantor in the due observance or performance of the covenants set forth in Article 4 hereof it shall not constitute a default under this Section 6.02(a)(ii)(C); or

(ii) default shall have been made by any Issuer or Guarantor in the due observance or performance of any of the covenants in Section 4.19, Section 4.20, Section 4.27 or Section 4.32 and such default shall continue unremedied for more than ten (10) Business Days after the earlier of (x) a Responsible Officer of an Issuer obtaining knowledge of such default or (y) receipt by an Issuer of notice from the Trustee of such default; or

(iii) default by any Issuer or Guarantor in the due observance or performance of any other covenant, condition or agreement to be observed or performed by it pursuant to the terms of this Indenture or any of the other Collateral Documents and such default continues unremedied or uncured for more than thirty (30) days (or 135 days in the case of Section 4.16(c) and (d)) after the earlier of (i) a Responsible Officer of an Issuer obtaining knowledge of such default or (ii) receipt by an Issuer of notice from the Trustee of such default; provided that, if such Person is proceeding with diligence and good faith to cure or remedy such default and such default is susceptible to cure or remedy, such thirty (30) day (or 135 days in the case of Section 4.16(c) and (d)) period shall be extended as may be necessary to cure such failure, such extended period not to exceed ninety (90) days (or 150 days in the case of Section 4.16(c) and (d)) in the aggregate (inclusive of the original thirty (30) days (or the original 135 day period in the case of Section 4.16(c) and (d))); or

(iv) (A) any material provision of this Indenture or of any Collateral Document to which any Issuer or Guarantor is a party ceases to be a valid and binding obligation of such party, or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document, (B) the Lien on any material portion of the Collateral intended to be created by the Collateral Documents shall cease to be or shall not be a valid and perfected (to the extent required hereunder or under such Collateral Documents) Lien having the priorities contemplated in this Indenture (subject to Permitted Liens, and except as permitted by the terms of this Indenture or the Collateral Documents or as a result of the action, delay or inaction of the Trustee) or (C) the Note Guarantee set forth in Article 10 shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of such Note Guarantee, or any Guarantor shall fail to comply with any of the terms or provisions of such Note Guarantee, or any Guarantor shall deny that it has any further liability under such Note Guarantee; provided that, in each case, unless any Issuer Party shall have contested or challenged, other than good faith disputes regarding interpretation of contractual provisions, the validity, perfection or priority of, or attempted to invalidate, such liens or the validity or enforceability of a material provision of any Notes Document or material portion of any Collateral or guaranty document, such breach shall not be an Event of Default unless such breach continues unremedied or uncured for more than thirty (30) Business Days after the earlier of (x) a Responsible Officer of an Issuer obtaining knowledge of such default or (y) receipt by Issuers of written notice from the Trustee of such default; or
(v) any SPV Party (i) commences a voluntary case or procedure, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of it or for all or substantially all of its property, (iv) makes a general assignment for the benefit of its creditors, (v) admits in writing its inability generally to pay its debts as they become due, or (vi) proposes or passes a resolution for its voluntary winding up or liquidation; or

(vi) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against any SPV Party;

(B) appoints a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of any SPV Party or for all or substantially all of the property of any SPV Party;

(C) commences proceedings for a compromise or arrangement with any SPV Party's creditors (or class or classes of creditors), or

(D) orders the liquidation of any SPV Party

and, in each case, the order or decree remains unstayed and in effect for sixty (60) consecutive days; or

(vii) failure by any Issuer or any Guarantor to pay one or more final judgments entered by a court or courts of competent jurisdiction aggregating in excess of $200 million (determined net of amounts covered by insurance policies issued by creditworthy insurance companies or by third-party indemnities or a combination thereof), which judgments are not paid, discharged, bonded, vacated, satisfied or stayed for a period of sixty (60) days; or

(viii) (i) Delta shall default in the performance of any obligation relating to Material Indebtedness and any applicable grace periods shall have expired and any applicable notice requirements shall have been complied with, and as a result of such default the holder or holders of such Material Indebtedness or any trustee or agent on behalf of such holder or holders shall have caused such Material Indebtedness to become due prior to its scheduled final maturity date or (ii) Delta shall default in the payment of the outstanding principal amount due on the scheduled final maturity date of any Indebtedness outstanding under one or more agreements, any applicable grace periods shall have expired and such failure to make payment when due shall be continuing for a period of more than five (5) consecutive Business Days following the applicable scheduled final maturity date thereunder, in an aggregate principal amount at any time unpaid exceeding $200 million; provided that such payment default or acceleration resulting from any Parent Bankruptcy Event shall not constitute a default under this Section 6.02(a)(viii); provided, further, that if any such default shall be waived or cured (as evidenced by a writing from the applicable holder, agent or trustee) then, to the extent of such waiver or cure, the Event of Default hereunder by reason of such default shall be deemed likewise to have been thereupon waived or cured; or
(ix) any SPV Party shall default in the performance of any obligation relating to Material Indebtedness and any applicable grace periods shall have expired and any applicable notice requirements shall have been complied with, and as a result of such default the holder or holders of such Material Indebtedness or any trustee or agent on behalf of such holder or holders shall have caused, or shall be entitled or permit or have the right to cause, such Material Indebtedness to become due prior to its scheduled final maturity date or (ii) any SPV Party shall default in the payment of the outstanding principal amount due on the scheduled final maturity date of any Indebtedness outstanding under one or more agreements of such party, any applicable grace periods shall have expired following the applicable scheduled final maturity date thereunder, in an aggregate principal amount at any time unpaid exceeding $200 million; provided, further, that if any such default shall be waived or cured (as evidenced by a writing from the applicable holder, agent or trustee) then, to the extent of such waiver or cure, the Event of Default hereunder by reason of such default shall be deemed likewise to have been thereupon waived or cured; or

(x) a termination of a Plan of any Issuer or Guarantor pursuant to Section 4042 of ERISA that would reasonably be expected to result in a Material Adverse Effect; or

(xi) (i) an exit from, or a termination or cancellation of, the SkyMiles Program or (ii) any termination, expiration or cancellation of (1) an Intercompany Agreement, (2) the Delta Intercompany Loan or (3) a Material SkyMiles Agreement for which, solely in the case of this Section 6.02(a)(xi)(3), (other than an Intercompany Agreement) a Permitted Replacement SkyMiles Agreement is not entered into as of the effective date of such termination, expiration or cancellation; or

(xii) any Issuer or any Guarantor makes a Material Modification to a Material SkyMiles Agreement or the Delta Intercompany Loan without the prior written consent of the Master Collateral Agent (acting at the direction of the Required Debtholders); or

(xiii) any termination or cancellation of any IP License; or

(xiv) after the occurrence of a Parent Bankruptcy Event, any of the Delta Case Milestones shall cease to be met or complied with, as applicable; or
(xv) an SPV Party Change of Control; or

(xvi) (i) failure of (A) any SPV Party to maintain at least the Required Number of Independent Directors for more than five (5) consecutive Business Days (or 30 days in the case of such Independent Director’s death, disability or resignation, provided that in the case of Loyalty Co, one Independent Director remains at Loyalty Co during such period), (ii) the removal of any Independent Director of any SPV Party without “cause” (as such term is defined in the organizational or constitutional documents of such SPV Party) or without giving prior written notice to the Trustee, each as required in the organizational or constitutional documents of the related entity or (iii) an Independent Director of any SPV Party that is not an Approved Independent Director shall be appointed without the consent of the Collateral Controlling Party.

(b) Subject to the terms of the Collateral Agency and Accounts Agreement, after the occurrence and during the continuance of any Event of Default, any payments, recoveries or distributions received in any proceeding under any Bankruptcy Laws, including adequate protection and Chapter 11 plan distributions, to the extent received by the Trustee from the Master Collateral Agent as the Notes’ Pro Rata Share thereof shall be applied by the Trustee and any Available Funds, as follows:

(i) first, (y) ratably, (i) to the Master Collateral Agent and the Depositary, for the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to such Agents pursuant to the terms of this Indenture and the Collateral Documents, and (ii) the Trustee, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to such Agents pursuant to the terms of this Indenture and the Collateral Documents and then (z) ratably the Notes’ Pro Rata Share of the amount of fees, expenses and other amounts (including indemnification amounts) due and owing to any Independent Director of any SPV Party (to the extent not otherwise paid);

(ii) second, to the Trustee, on behalf of the Holders, in the amount necessary to pay any due and unpaid interest on the Notes;

(iii) third, to the Trustee, on behalf of the Holders, in an amount equal to the amount necessary to pay the outstanding principal balance of the Notes in full;

(iv) fourth, to pay to the Trustee on behalf of the Holders, any additional Obligations then due and payable, including any premium;

(v) fifth, until all Priority Lien Debt is paid in full, to the Master Collateral Agent to be maintained in the Collection Account or distributed in accordance with the Collateral Agency and Accounts Agreement; and

(vi) sixth, all remaining amounts shall be released to or at the direction of Loyalty Co.

Section 6.03 Remedies Exercisable by the Trustee.
Upon the occurrence of an Event of Default and at any time thereafter during the continuance of such event, the Trustee shall, at the request of the Permitted Noteholders with respect to a Series of Notes, by written notice to the Holders (with a copy to the Master Collateral Agent and the Trustee), take one or more of the following actions, at the same or different times:

(i) declare the Notes of such Series or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of the Notes of such Series and other Obligations and all other liabilities of the Issuers accrued under this Indenture and under any other Collateral Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived by the Issuers or Guarantors, anything contained herein or in any other Collateral Document to the contrary notwithstanding;

(ii) [reserved];

(iii) set-off amounts in any accounts (other than accounts pledged to secure other Indebtedness of any Issuer or Guarantor, Escrow Accounts, Payroll Accounts, other accounts held in trust for an identified beneficiary) maintained with the Trustee, the Master Collateral Agent or Depositary (or any of their respective affiliates) and apply such amounts to the obligations of the Issuers and the Guarantors under this Indenture and in the Collateral Documents; and

(iv) subject to the terms of the Collateral Documents, exercise any and all remedies under the Collateral Documents and under applicable law available to the Trustee and the Holders.

In case of any Event of Default described in Section 6.02(a)(v), Section 6.02(a)(vi) or Section 6.02(a)(xiv) hereof, the actions and events described in Section 6.03(a)(i) and Section 6.03(a)(ii) hereof shall be required or taken automatically, without presentment, demand, protest or other notice of any kind, all of which will be waived by the Issuers and the Guarantors.

Section 6.04 Waiver of Past Defaults.

The Permitted Noteholders of a Series of Notes by notice to the Trustee may on behalf of the Holders of all of the Notes of such Series waive any existing Default and its consequences under this Indenture, except a continuing Default in the payment of interest, principal and premium, if any, on any Note of such Series held by a non-consenting Holder; provided, that subject to Section 6.03 hereof, the Permitted Noteholders of a Series of Notes may rescind an acceleration and its consequences with respect to the Notes of such Series, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.
The Holders of a majority in principal amount of the outstanding Notes of a Series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee with respect to the Notes of such Series. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that, subject to Section 7.01, the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note of such Series or that would subject the Trustee to personal liability; provided, however that the Trustee has no duty to determine whether any such action is prejudicial to any Holder or beneficial owner of the Notes.

Section 6.06 Limitation on Suits.

(a) Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(i) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(ii) Holders of at least 25.0% in aggregate principal amount of the total outstanding Notes have made a written request to the Trustee to pursue the remedy;

(iii) Holders of the Notes have offered and, if requested, provide to the Trustee indemnity or security reasonably satisfactory to the Trustee against any loss, liability or expense;

(iv) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(v) the Permitted Noteholders have not given the Trustee a direction inconsistent with such request within such 60-day period.

(b) A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, interest and premium, if any, on the Notes, on or after the respective due dates expressed in the Note (including in connection with a Mandatory Repurchase Offer or a Parent Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.02(a)(i) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of interest remaining unpaid, principal and premium, if any, on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.
Section 6.09  **Restoration of Rights and Remedies.**

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10  **Rights and Remedies Cumulative.**

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11  **Delay or Omission Not Waiver.**

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12  **Trustee May File Proofs of Claim.**

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes including the Guarantors), their creditors or their property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.
Section 6.13 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys’ fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.13 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10.0% in principal amount of the then-outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing (which is known to the Trustee), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person’s own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).
the Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this Section 7.01(c) does not limit the effect of Section 7.01(b);

(ii) the Trustee shall not be liable for any error of judgment made in good faith, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.06 hereof.

Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Article 7.

The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes, unless the Holders have offered, and if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense.

The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person and upon any order or decree of a court of competent jurisdiction. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, they may require an Officer’s Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer’s Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel or both shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.
Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuers shall be sufficient if signed by a Responsible Officer of the Issuers.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or security or indemnity satisfactory to it against such risk or liability is not assured to it.

The Trustee shall not be deemed to have notice of any Default or Event of Default other than an Event of Default under 6.02(a)(i)(A) or 6.02(a)(i)(B) unless written notice of any event which is in fact such a Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee and such notice references the Notes and this Indenture. The Trustee shall not be responsible for knowledge of the terms and conditions of any other agreement, instrument or document other than this Indenture and the Collateral Documents to which it is party.

In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder and under the Collateral Documents, and each agent, custodian and other Person employed to act hereunder.

The Trustee may request that the Issuers and any Guarantor deliver an Officer’s Certificate (upon which the Trustee may conclusively rely) setting forth the names of the individuals and/or titles of Responsible Officers (with specimen signatures) authorized at such times to take specific actions pursuant to this Indenture, which Officer’s Certificate may be signed by any person specified as so authorized in any certificate previously delivered and not superseded.

The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

The permissive right of the Trustee to take or refrain from taking any actions enumerated herein shall not be construed as a duty.

The Trustee shall not be bound to make any investigation into (i) the performance or observance by the Issuers or any other Person of any of the covenants, agreements or other terms or conditions set forth in this Indenture or in any related document, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture, any related document or any other agreement, instrument or document, (iii) the creation, perfection or priority of any Lien purported to be created by this Indenture or any related document or (iv) the value or the sufficiency of any Collateral.
The Trustee shall not have any duty or responsibility in respect of (i) any recording, filing, or depositing of this Indenture or any other agreement or instrument, monitoring or filing any financing statement or continuation statement evidencing a security interest, the maintenance of any such recording, filing or depositing or to any re-recording, re-filing or re-depositing of any thereof, or otherwise monitoring the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral, (ii) the acquisition or maintenance of any insurance or (iii) the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or to institute, conduct or defend any litigation hereunder or in relation hereto, at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture or any related document, unless such Holders shall have offered to the Trustee security, indemnity or prefunding satisfactory to the Trustee, in its sole discretion, against the losses, costs, expenses (including attorneys’ fees and expenses) and liabilities that might be incurred by the Trustee in compliance with such request, order or direction.

Each Holder, by its acceptance of a Note hereunder, represents that it has, independently and without reliance upon the Trustee or any other Person, and based on such documents and information as it has deemed appropriate, made its own investment decision in respect of the Notes. Each Holder also represents that it will, independently and without reliance upon the Trustee or any other Person, and based on such documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under this Indenture and in connection with the Notes. Except for notices, reports and other documents expressly required to be furnished to the Holders by the Trustee hereunder, the Trustee shall not have any duty or responsibility to provide any Holder with any other information concerning the Issuer, the servicer or any other parties to any related documents which may come into the possession of the Trustee or any of its officers, directors, employees, agents, representatives or attorneys-in-fact.

If the Trustee requests instructions from the Issuers or the Holders with respect to any action or omission in connection with this Indenture, the Trustee shall be entitled (without incurring any liability therefor) to refrain from taking such action and continue to refrain from acting unless and until the Trustee shall have received written instructions from the Issuers or the Holders, as applicable, with respect to such request.

In no event shall the Trustee be liable for any failure or delay in the performance of its obligations under this Indenture or any related documents because of circumstances beyond the Trustee’s control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, pandemics, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Indenture or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Trustee’s control whether or not of the same class or kind as specified above; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.
The Trustee shall not be liable for failing to comply with its obligations under this Indenture in so far as the performance of such obligations is dependent upon the timely receipt of instructions and/or other information from any other person which are not received or not received by the time required.

The Trustee shall be fully justified in failing or refusing to take any action under this Indenture or any other related document if such action (A) would, in the reasonable opinion of the Trustee, in good faith (which may be based on the advice or opinion of counsel), be contrary to applicable law, this Indenture or any other related document, or (B) is not provided for in this Indenture or any other related document.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. The Agents may do the same with like rights.

Section 7.04 Trustee’s Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers’ use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers’ direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and if the Trustee is notified of such Default, or is required to take notice of such Default pursuant to Section 7.02(g) above, the Trustee shall send to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of interest, principal and premium, if any, on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default except as provided in Section 7.02(g) above or unless written notice of any event which is such a Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee.
Section 7.06  [Reserved.]

Section 7.07  Compensation and Indemnity.

(a) The Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee’s compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee’s agents and counsel.

(b) Subject to the final sentence of this Section 7.07(b), the Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee, its officers, directors, employees and agents for, and hold the Trustee harmless against, any and all loss, damage, claim, liability or expense (including attorneys’ fees) incurred by it in connection with the acceptance or administration of this Indenture and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuers and the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuers or any Guarantors, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, damage, claim, liability or expense incurred by the Trustee through the Trustee’s own willful misconduct or gross negligence.

(c) The obligations of the Issuers and the Guarantors under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the payment obligations of the Issuers and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except any funds held in trust and only available to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.02(a)(v) or Section 6.02(a)(vi) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.08  Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee’s acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers. The Holders of a majority in principal amount of the then-outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:
(i) the Trustee fails to comply with Section 7.10 hereof;

(ii) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a custodian or public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

(b) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then-outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

(c) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuers’ expense), the Issuers or the Holders of at least 10.0% in principal amount of the then-outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall send a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee: provided, all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuers’ obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another entity, the successor entity without any further act shall be the successor Trustee.

Section 7.10 Eligibility; Disqualification.
There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuers may, at their option and at any time, elect to have either Section 8.02 or Section 8.03 hereof applied to all outstanding Notes of either Series upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge.

(a) Upon the Issuers’ exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes of a Series and the related Note Guarantees on the date the conditions set forth below are satisfied (“Legal Defeasance”). For this purpose, Legal Defeasance means that the Issuers shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes of a Series, which shall thereafter be deemed to be “outstanding” only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in this Section 8.02(a) and Section 8.02(b), and to have satisfied all its other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuers, shall execute such instruments reasonably requested by the Issuers acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(i) the rights of Holders of Notes of such Series to receive payments in respect of the interest, principal and premium, if any, on such Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;

(ii) the Issuers’ obligations with respect to Notes of such Series concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(iii) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuers’ obligations in connection therewith; and

(iv) this Article 8.
Subject to compliance with this Article 8, the Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 Covenant Defeasance.

Upon the Issuers’ exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Section 4.02, Section 4.06, Section 4.09, Section 4.10, Section 4.12 through Section 4.16, Section 4.21 through Section 4.24, Section 4.26, Section 4.27, Section 4.28 (except for Section 4.28(a)(B)), Section 4.29, Section 4.31, Section 4.32 and Section 4.34 hereof with respect to the outstanding Notes of a Series and related Note Guarantees on and after the date the conditions set forth in Section 8.04 hereof are satisfied ("Covenant Defeasance"), and the Notes of such Series shall thereafter be deemed not “outstanding” for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed “outstanding” for all other purposes hereunder (it being understood that such Notes may not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes of a Series, the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.02 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuers’ exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Section 6.02(a)(ii) (solely with respect to the defeased covenants listed above), Section 6.02(a)(iii) (solely with respect to the defeased covenants listed above) or Section 6.02(a)(iv) hereof shall not constitute Events of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.02 or Section 8.03 hereof to the outstanding Notes of a Series:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes of such Series, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the interest, principal and premium, if any, on the outstanding Notes of such Series on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(b) in the case of Legal Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel confirming that,
(i) the Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(ii) since the date of this Indenture, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that the Holders of the Notes of such Series shall not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and shall be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel confirming that the Holders of the Notes of such Series shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and shall be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which either Issuer is bound;

(e) the Issuers shall have delivered to the Trustee an Officer’s Certificate stating that the deposit was not made by the Issuers with the intent of preferring the holders of the Notes of such Series over any other creditors of the Issuers or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuers or others;

(f) the Issuers shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with; and

(g) no Event of Default shall have occurred and be continuing either: (x) on the date of such deposit (other than an Event of Default resulting from the borrowing of funds to be applied to such deposit); or (y) insofar as the Events of Default under Section 6.02(a)(v) or Section 6.02(a)(vi) are concerned, at any time in the period ending on the 91st day after the date of deposit.

Section 8.05 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the “Trustee”) pursuant to Section 8.04 hereof in respect of the outstanding Notes of a Series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of interest, principal and premium, if any, on the Note of such Series, but such money need not be segregated from other funds except to the extent required by law. The Trustee is authorized to establish an additional trust fund hereunder, as needed, for the deposit and disbursement of funds pursuant to this Article 8.
The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04 hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Issuers.

Subject to applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the interest, principal and premium, if any, on any Note and remaining unclaimed for two years after such interest, principal and premium, if any, on such Note has become due and payable shall be paid to the Issuers on their request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or Section 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers’ obligations under the Notes Documents shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or Section 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or Section 8.03 hereof, as the case may be; provided, however, that if the Issuers make any payment of interest, principal and premium, if any, on any Note following the reinstatement of their obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

Section 8.08 Application of Trust Money.

Subject to the provisions of Section 8.06, all money deposited with the Trustee pursuant to this Article 8 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including either of the Issuers acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the interest, principal and premium, if any, on the Notes for whose payment such money has been deposited with or received by the Trustee; but such money need not be segregated from other funds except to the extent required by law. Money so held in trust is subject to the Trustee’s rights under Section 7.07.
ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

(a) Notwithstanding Section 9.02 hereof, the Issuers, any Guarantor (with respect to a Note Guarantee or this Indenture), the Trustee and the Master Collateral Agent (with respect to any Collateral Document), subject to the restrictions in the Collateral Agency and Accounts Agreement, may amend or supplement this Indenture and any of the Collateral Documents (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Collateral Document) without the consent of any Holder and the Issuers may direct the Trustee, and the Trustee shall (upon receipt of the documents required by the last paragraph of this Section 9.01), enter into an amendment to this Indenture or any of the Collateral Documents, as applicable, to:

(i) effect the issuance of additional Notes of a Series in accordance with the terms of this Indenture and the Collateral Documents or terms thereof (including by increasing (but, for the avoidance of doubt, not decreasing), the amount of amortization due and payable with regard to any outstanding series of Notes); or amend or supplement any Intercreditor Agreement; provided, that no such agreement shall amend, modify or otherwise directly and adversely affect the rights or duties of the Trustee under this Indenture or any Collateral Document without its prior written consent;

(ii) evidence the succession of another Person to Loyalty Co or Delta pursuant to a consolidation, merger or conveyance, transfer or lease of assets permitted under this Indenture;

(iii) surrender any right or power conferred upon the Issuers or any Guarantors;

(iv) add to the covenants such further covenants, restrictions, conditions or provisions for the protection of the Holders of the Notes, and to add any additional Events of Default for the Notes;

(v) (x) to cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined in good faith by Delta), (y) effect administrative changes of a technical or immaterial nature and (z) correct or cure any incorrect cross references or similar inaccuracies and such amendment shall be deemed approved by the Holders if the Holders shall have received at least five (5) Business Days' prior written notice of such change and the Trustee shall not have received, within five (5) Business Days of the date of such notice to the Holders, a written notice from the Permitted Noteholders of each Series stating that such Permitted Noteholders object to such amendment;
convey, transfer, assign, mortgage or pledge any property to or with the Trustee, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not adversely affect the interests of any holders of Notes;

(vii) to modify or amend this Indenture in such a manner as to permit the qualification of this Indenture or any supplemental Indenture under the Trust Indenture Act as then in effect;

(viii) to add to or change any provisions of this Indenture to such extent as necessary to permit or facilitate the issuance of the Notes of a Series in bearer or uncertificated form, provided that any such action shall not adversely affect the interests of the Holders of Notes of such Series in any material respect;

(ix) (A) effect the granting, perfection, protection, expansion or enhancement of any security interest for the benefit of the Senior Secured Parties, in any property or so that the security interests therein comply with applicable requirements of law, (B) as required by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Senior Secured Parties, in any property or so that the security interests therein comply with applicable requirements of law, or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined in good faith by Delta with respect to this Indenture or the Collateral Controlling Party, as applicable, in the case of any Collateral Document) or to cause such guarantee, collateral or security document or other document to be consistent with this Indenture and the Collateral Documents;

(x) provide additional guarantees for the Notes of any Series;

(xi) evidence the release of liens in favor of the Master Collateral Agent in the Collateral in accordance with the terms of this Indenture or the Collateral Documents;

(xii) evidence and provide for the acceptance of appointment of a separate or successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of this Indenture by more than one Trustee; or

(xiii) conform the text of the Notes, the Note Guarantees or any of the Notes Documents to any provision of the section “Description of Notes” in the Offering Memorandum to the extent that such provision in the Offering Memorandum was intended to be a verbatim recitation of a provision of the Notes, the Note Guarantees or any of the Notes Documents, as set forth in an Officer’s Certificate delivered to the Trustee.

(b) Upon the request of the Issuers and upon receipt by the Trustee of the documents described in Section 9.06 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture.
Section 9.02 With Consent of Holders of Notes.

(a) Except as provided in this Section 9.02, the Issuers and the Trustee may amend or supplement this Indenture and any Collateral Document with the consent of the Permitted Noteholders voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 and Section 2.09 hereof shall determine which Notes are considered to be “outstanding” for the purposes of this Section 9.02.

(b) Upon the request of the Issuers and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee and Master Collateral Agent, if applicable, of the documents described in Section 9.06 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of such amended or supplemental indenture or amendment or supplement to Collateral Documents unless such amended or supplemental indenture or amendment or supplement to any Collateral Document affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee, may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

(c) It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver. It shall be sufficient if such consent approves the substance of the proposed amendment or supplement. A consent to any amendment, supplement or waiver under this Indenture by any Holder given in connection with a tender of such Holder’s Notes will not be rendered invalid by such tender.

(d) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall send to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. The failure to give such notice to all the Holders, or any defect in the notice will not impair or affect the validity of any such amendment, supplement or waiver. Furthermore, by its acceptance of the Notes, each Holder of the Notes is deemed to have consented to the terms of the Intercreditor Agreements and the Collateral Documents and to have authorized and directed the Trustee to execute, deliver and perform each of the Intercreditor Agreements and Collateral Documents to which it is a party, binding the Holders to the terms thereof.

(e) Except as provided in Section 9.01 or as otherwise set forth in this Indenture, no modification, amendment or waiver of any provision of this Indenture or any Collateral Document (other than any Account Control Agreement), and no consent to any departure by any Issuer or Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Issuers and the Permitted Noteholders of the affected Series (or signed by the Trustee with the written consent of the Permitted Noteholders of the affected Series); and, with respect to any Collateral Document, subject to the restrictions in the Collateral Agency and Accounts Agreement, provided that no such modification, amendment or supplement shall without the prior written consent of:
(i) each Holder directly and adversely affected thereby, (A) reduce the principal amount of, premium, if any, or interest if any, on, or (B) extend the Stated Maturity or interest payment periods, of the Notes of the affected Series (provided that only the consent of the Permitted Noteholders of the affected Series shall be necessary for a waiver of defaulted interest) or (C) modify such Holder’s ability to vote its obligations pursuant to the Collateral Agency and Accounts Agreement;

(ii) all of the Holders of an affected Series of Notes, (A) amend or modify any provision of this Indenture which provides for the unanimous consent or approval of the Holders to reduce the percentage of principal amount of Notes the holders required thereunder or (B) release all or substantially all of the Liens granted to the Master Collateral Agent under this Indenture or under any Collateral Document (other than as permitted under this Indenture or by the terms of the Collateral Document or the Junior Lien Intercreditor Agreements);

(iii) all of the Holders, except as referred to under Article 8, release all or substantially all of the Guarantors;

(iv) the Holders holding no less than 66.67% of the outstanding principal amount of the Notes, (A) release any of the Collateral (other than as permitted under this Indenture or the Collateral Documents), (B) release any Note Guarantees of the Notes, (C) amend, modify or waive any provision of Section 4.32 or (D) effect any shortening or subordination of term or reduction in liquidated damages under the Delta License;

(v) the Permitted Noteholders of an affected Series of Notes, to make the Notes of such holder payable in money or securities other than that as stated in the Notes;

(vi) the Permitted Noteholders of an affected Series of Notes, to impair the right of such holder to institute suit for the enforcement of any payment with respect to the Notes;

(vii) all Holders of an affected Series of Notes, reduce the percentage specified in the definition of “Permitted Noteholders” or otherwise amend this Section 9.02 in a manner that has the effect of changing the number or percentage of Holders that must approve any modification, amendment, waiver or consent and

(viii) all Holders of an affected Series of Notes, modify any of the foregoing Section 9.02(e)(i) through (vii).

The Collateral Controlling Party may, in its sole discretion, grant extensions of time for the satisfaction of any of the requirements described in Section 4.12(a) and Section 4.14.
Section 9.03  [Reserved].

Section 9.04  Revocation and Effect of Consents.

(a) Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder’s Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

(b) The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05  Notation on or Exchange of Notes.

(a) The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

(b) Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06  Trustee to Sign Amendments, Etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In executing any amendment, supplement or waiver, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officer’s Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and an Opinion of Counsel stating that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, and complies with the provisions hereof. Notwithstanding the foregoing and upon satisfaction of the requirements set forth in the last sentence of Section 9.01 hereof, no Opinion of Counsel shall be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.
ARTICLE 10

GUARANTEES

Section 10.01 Guarantors.

(a) Subject to this Article 10 and the Agreed Guarantee Principles contemplated by Section 4.12 hereof, each of the Guarantors hereby, jointly and severally irrevocably and unconditionally guarantees (the “Note Guarantees”), to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuers hereunder or thereunder, the due and punctual payment of the unpaid principal and interest on (including defaulted interest, if any, and interest accruing after the Stated Maturity of after the filing of any petition of bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Issuer, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) each Note, whether at the Stated Maturity, upon redemption, upon required prepayment, upon acceleration, upon required repurchase at the option of the holder or otherwise according to the terms of this Indenture and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full in cash, all in accordance with the terms hereof and thereof. Failing payment when due of any amount so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to or any amendment of any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that this Note Guarantee shall not be discharged except pursuant to Article 8 or Article 10 or by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuers or the Guarantors, any amount paid either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantees.
Each Note Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuers for liquidation or reorganization, should the Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuers’ assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Note Guarantees, whether as a “voidable preference,” “fraudulent transfer” or otherwise, all as though such payment had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 10.02  Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law or to comply with corporate benefit, financial assistance and other laws.

Section 10.03  Execution and Delivery.

(a) To evidence its Note Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by one of its Responsible Officers.

(b) Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Note Guarantee on the Notes.
(c) If a Responsible Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Note Guarantee shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

(e) If required by Section 4.12 hereof, the Issuers shall cause any newly created or acquired Grantor to comply with the provisions of Section 4.12 hereof and this Article 10, to the extent applicable.

Section 10.04 Benefits Acknowledged.

Each Guarantor acknowledges that it shall receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Note Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 11
SATISFACTION AND DISCHARGE

Section 11.01 Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes of a Series, when:

(a) either

(i) all Notes of such Series theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(ii) all Notes of such Series not theretofore delivered to the Trustee for cancellation have become due and payable at their maturity within one year or may be called for redemption within one year, and at the expense, of the Issuers and the Issuers or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes of such Series, cash in U.S. dollars, Government Securities or a combination thereof, in such amounts sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes of such Series not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest, if any, to the date of such deposit (in the case of Notes which have become due and payable) or to the final maturity date or redemption date, as the case may be;

(b) the Issuers have paid or caused to be paid all other sums payable by it under this Indenture in respect of the Notes of such Series; and
the Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes of such Series at maturity or the redemption date, as the case may be.

In addition, the Issuers must deliver an Officer’s Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, the provisions of Section 7.07 hereof shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (i) of clause (a) of this Section 11.01, the provisions of Section 11.02 and Section 8.06 hereof shall survive.

Section 11.02 Application of Trust Money

(a) Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the interest, principal and premium, if any on the Notes for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

(b) If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers’ and any Guarantor’s obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof, provided, that if the Issuers have made any payment of interest, principal and premium, if any, on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12
MISCELLANEOUS

Section 12.01 Issuers

(a) Joint and Several Liability. All Obligations of the Issuers under this Indenture and the other Notes Documents shall be joint and several Obligations of the Issuers, each as principal. Anything contained in this Indenture and the other Notes Documents to the contrary notwithstanding, the Obligations of each Issuer hereunder, solely to the extent that such Issuer did not receive proceeds of Notes from any issuance hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the Obligations of such Issuer (collectively, the “Fraudulent Transfer Laws”), in each case after giving effect to all other liabilities of such Issuer, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Issuer in respect of intercompany Indebtedness to any other Issuer or Guarantor or their respective Affiliates to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Issuer or Guarantor hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Issuer pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Issuer and other Affiliates of any Issuer or Guarantor of Obligations arising under guarantees by such parties.
(b) Subrogation. Until the Obligations shall have been paid in full in cash, each Issuer shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy which it now has or may hereafter have against the other Issuer or any Guarantor of the Obligations. Each Issuer further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Issuer may have against the other Issuer, any collateral or security or any such other Guarantor, shall be junior and subordinate to any rights the Agents or the Holder may have against the other Issuer, any such collateral or security, and any such other Guarantor.

(c) Obligations Absolute. Each Issuer hereby waives, for the benefit of the Senior Secured Parties: (1) any right to require any Senior Secured Parties, as a condition of payment or performance by such Issuer, to (i) proceed against any other Issuer or any other Person, (ii) proceed against or exhaust any security held from any other Issuer, any Guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Senior Secured Party in favor of any other Issuer or any other Person, or (iv) pursue any other remedy in the power of any Senior Secured Party whatsoever; (2) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Issuer including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Issuer from any cause other than payment in full of the Obligations; (3) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (4) any defense based upon any Senior Secured Party’s errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (5) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Issuer’s obligations hereunder, (ii) the benefit of any statute of limitations affecting such Issuer’s liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments, recharacterization and counterclaims, and (iv) promptness, diligence and any requirement that any Senior Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (6) notices, demands, presentations, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to such Issuer and any right to consent to any thereof; (7) any defense based upon any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Notes Documents and (8) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.
The obligations of the Issuers hereunder shall not, to the extent permitted by applicable law, be affected by (i) the failure of the Trustee, the Collateral Administrator, the Master Collateral Agent or a Holder to assert any claim or demand or to enforce any right or remedy against any other Issuer Party under the provisions of this Indenture or any other Notes Document or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Notes Documents; (iv) the release, exchange, waiver or foreclosure of any security held by the Master Collateral Agent or the Trustee for the Obligations of any of them; (v) the failure of the Trustee or a Holder to exercise any right or remedy against any other Issuer Party; or (vi) the release or substitution of any Collateral or any other Issuer Party.

To the extent permitted by applicable law, each Issuer hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the other Issuer and of any other Issuer Party and any circumstances affecting the ability of the Issuers to perform under this Indenture.

Each Issuer further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Trustee, any Holder or any other Secured Party upon the bankruptcy or reorganization of the other Issuer or any Guarantor, or otherwise.

Section 12.02 Notices.

(a) Any notice or communication required or given hereunder shall be in writing and delivered in person or sent by first-class mail (registered or certified, return receipt requested), fax or other electronic transmission (other than to the Issuer, unless agreed by the applicable Issuer in its sole discretion) or overnight air courier guaranteeing next day delivery addressed as follows:

If to the Issuers and/or any Guarantor:

Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, GA 30354
Attention of:
(x) Treasurer, Dept. 856, Telex No.: , Telephone No.:
(y) Chief Legal Officer, Dept. 971, Telex No.: , Telephone No.:

If to the Trustee:
The Issuers, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

(b) The Issuers or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(c) Any notice or communication sent to a Holder shall be sent to the Holder at the Holder’s address as it appears on the registration books of the Registrar and shall be sufficiently given if so sent within the time prescribed.

(d) Failure to send a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it.

(e) Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Notes Depositary pursuant to the standing instructions from the Notes Depositary.

(f) If a notice or communication is sent in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

(g) If the Issuers send a notice or communication to Holders, they shall send a copy to the Trustee and each Agent at the same time.

(h) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the Issuers, any Guarantor or any Holder elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee’s understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(i) All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature in English. The Issuer Parties agree to assume all risks arising out of the use of digital signatures and electronic methods to submit communications to the Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.
Section 12.03  **CFC or a FSHCO Provisions.**

Notwithstanding any term of any Notes Document, no issuance or other obligation of any Issuer, under any Notes Document, may be, directly or indirectly (including by application of any payments made by or amounts received or recovered from any CFC or FSHCO):

(i) guaranteed by a CFC or a FSHCO;

(ii) secured by any assets of a CFC or FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO); or

(iii) secured by a pledge or other security interest in excess of 65% of the voting equity interests of any CFC or FSHCO.

Section 12.04  **Certificate and Opinion as to Conditions Precedent.**

Upon any request or application by the Issuers or any of the Guarantors to the Trustee to take or refrain from taking any action under this Indenture, the Issuers or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer’s Certificate in form and substance satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied.

Section 12.05  **Statements Required in Certificate or Opinion.**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.02 hereof) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or
her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be
limited to reliance on an Officer’s Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such individual, such condition or covenant has been complied with; provided, that
with respect to matters of fact, an Opinion of Counsel may rely on an Officer’s Certificate or certificates of public officials.

Section 12.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and
set reasonable requirements for its functions.

Section 12.07 No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, present or future director, officer, employee, incorporator, member, partner or stockholder of any Issuer Party, or any of their direct or
indirect parent companies or respective affiliates, shall have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Note Guarantees
or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all
such liability. The waiver and release are part of the consideration for issuance of the Notes and the Note Guarantees.

Section 12.08 Governing Law.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE
NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT
THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 12.09 Waiver of Jury Trial.

EACH OF THE ISSUERS, THE GUARANTORS, THE TRUSTEE AND EACH HOLDER OF A NOTE BY ITS ACCEPTANCE THEREOF
HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN
ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED
HEREBY.

Section 12.10 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuers or Guarantors or of any other Person. Any
such indenture, loan or debt agreement may not be used to interpret this Indenture.
Section 12.11 Successors.

All agreements of the Issuers and the Guarantors in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors.

Section 12.12 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.13 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words “execution,” “signed,” “signature,” and words of like import in this Indenture or any related document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. The Trustee shall not have a duty to inquire into or investigate the authenticity or authorization of any electronic signature and both shall be entitled to conclusively rely on any electronic signature without any liability with respect thereto.

Section 12.14 Table of Contents, Headings, Etc.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.


The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee are required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as the Trustee may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.
Section 12.16 Jurisdiction.

Each party hereto agrees that any suit, action or proceeding against the Issuers or any Guarantor brought by any Holder or the Trustee arising out of or based upon this Indenture, the Note Guarantees or the Notes may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. Each party hereto irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture, the Note Guarantees or the Notes, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Each party hereto agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon such party and may be enforced in any court to the jurisdiction of which such party is subject by a suit upon such judgment. Each SPV Party hereby designates and appoints Delta as its authorized agent upon which process may be served in any such action or proceeding that may be instituted in any such court, and agrees that service of any process, summons, notice or document by U.S. registered mail addressed to Delta, with written notice of said service to such Person at the address of Delta set forth in Section 12.02 hereof, shall be effective service of process for any such legal action or proceeding brought in any such court.

Section 12.17 Payment Dates; Record Dates.

If a Payment Date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue for the intervening period. If a record date is not a Business Day, the record date shall not be affected.

Section 12.18 Currency Indemnity.

Dollars are the sole currency (the “Required Currency”) of account and payment for all sums payable by the Issuers or any Guarantor under or in connection with the Notes, this Indenture and the Note Guarantees, including damages. Any amount with respect to the Notes, this Indenture the Note Guarantees or the other Notes Documents received or recovered in a currency other than the Required Currency, whether as a result of, or the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuers or any Guarantor or otherwise by any Holder or by the Trustee or Paying Agent or Master Collateral Agent, in respect of any sum expressed to be due to it from the Issuers or any Guarantor will only constitute a discharge to the Issuers or any Guarantor to the extent of the Required Currency amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).
If the Required Currency amount is less than the Required Currency amount expressed to be due to the recipient or the Trustee or Paying Agent under the Notes, the Issuers and each Guarantor will indemnify such recipient and/or the Trustee or Paying Agent against any loss sustained by it as a result. In any event, the Issuers and each Guarantor will indemnify the recipient against the cost of making any such purchase. For the purposes of this currency indemnity provision, it will be prima facie evidence of the matter stated therein, for the Holder of a Note or the Trustee or Paying Agent to certify in a manner satisfactory to the Issuers (indicating the sources of information used) the loss it incurred in making any such purchase. These indemnities constitute a separate and independent obligation from the Issuers’ and each Guarantor’s other obligations, will give rise to a separate and independent cause of action, will apply irrespective of any waiver granted by any Holder of a Note or the Trustee or Paying Agent (other than a waiver of the indemnities set out herein) and will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note or to the Trustee. For the purposes of determining the amount in a currency other than the Required Currency, such amount shall be determined using the Exchange Rate then in effect.

Section 12.19 Waiver of Immunity.

With respect to any proceeding, each party irrevocably waives, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, service of process, attachment (both before and after judgment) and execution to which it might otherwise be entitled in any court of competent jurisdiction, and with respect to any judgment, each party waives any such immunity in any court of competent jurisdiction, and will not raise or claim or cause to be pleaded any such immunity at or in respect of any such proceeding or judgment, including, without limitation, any immunity pursuant to the United States Foreign Sovereign Immunities Act of 1976, as amended.

ARTICLE 13

COLLATERAL

Section 13.01 Collateral Documents.

The due and punctual payment of the interest, principal and premium, if any, on the Notes and Note Guarantees when and as the same shall be due and payable, whether on a Payment Date, at maturity, by acceleration, repurchase, redemption, prepayment or otherwise, and interest on the overdue principal of and interest on the Notes and Note Guarantees and performance of all other Obligations of the Issuers and the Guarantors to the Senior Secured Parties under this Indenture, the Notes, the Note Guarantees, the Intercreditor Agreements and the Collateral Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Collateral Documents, which define the terms of the Liens that secure the Obligations, subject to the terms of the Intercreditor Agreements. The Trustee, the Issuers and the Guarantors hereby acknowledge and agree that the Master Collateral Agent holds the Collateral in trust for the benefit of the Senior Secured Parties pursuant to the terms of the Collateral Documents and the Intercreditor Agreements. Each Holder, by accepting a Note, (i) consents and agrees to the terms of the Collateral Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral) and the Intercreditor Agreements as each may be in effect or may be amended from time to time in accordance with their terms and this Indenture and the Intercreditor Agreements, (ii) authorizes and directs the Trustee and the Master Collateral Agent to enter into the Collateral Documents and the Intercreditor Agreements, (iii) authorizes and directs the Trustee to enter into the Collateral Agency and Accounts Agreement and any Junior Lien Intercreditor Agreement and (iv) authorizes and directs each of the Master Collateral Agent and the Trustee to perform its respective obligations and exercise its respective rights under and in accordance with the Collateral Documents and Intercreditor Agreements to which it is a party. The Issuers and the Guarantors shall deliver to the Master Collateral Agent copies of all documents required to be filed pursuant to the Collateral Documents, and will do or cause to be done all such acts and things as required by the next sentence of Section 13.01, to assure and confirm to the Master Collateral Agent a first-priority security interest in the Collateral, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Issuers and the Guarantors shall, in each case at their own expense, (A) cause each new Guarantor, as applicable, to become a Grantor and to become a party to each applicable Collateral Document and all other agreements, instruments or documents that create or purport to create and perfect a first priority Lien (subject to any Permitted Liens) in favor of the Master Collateral Agent for the benefit of the Senior Secured Parties in substantially all of its assets (other than Excluded Property), subject to and in accordance with the terms, conditions and provisions of this Indenture and the Collateral Documents (it being understood that only Loyalty Co, HoldCo 3 and new Guarantors, as applicable, shall be required to become Grantors and pledge their respective Collateral), (B) promptly execute and deliver (or cause such Subsidiary to execute and deliver) to the Master Collateral Agent such documents and take such actions to create, grant, establish, preserve and perfect the applicable priority Liens (subject to Permitted Liens) (including to obtain any release or termination of Liens not permitted under Section 4.25 and the filing of UCC financing statements, as applicable) in favor of the Master Collateral Agent for the benefit of the Senior Secured Parties on such assets of such Subsidiary to secure the Obligations to the extent required under the applicable Collateral Documents, and to ensure that such Collateral shall be subject to no other Liens other than any Permitted Liens and (C) if reasonably requested by the Trustee, deliver to the Trustee, for the benefit of the Trustee and the Senior Secured Parties, a customary written Opinion of Counsel to such Subsidiary with respect to the matters described in clauses (A) and (B) of this Section 13.01, in each case within twenty (20) Business Days after the addition of such Collateral.
Section 13.02 Non-Impairment of Liens.

Any release of Collateral permitted by Section 13.03 will be deemed not to impair the Liens under this Indenture and the Collateral Documents in contravention thereof.

Section 13.03 Release of Collateral.

The Liens granted to the Master Collateral Agent by the Issuers and Guarantors on any Collateral shall be automatically released with respect to the Notes:

(a) upon the sale or other disposition of such Collateral (including as part of or in connection with any other sale or other disposition permitted under this Indenture) to any Person other than another Issuer or Guarantor, to the extent such sale or other disposition is made in compliance with the terms of this Indenture and the Collateral Documents (and the Master Collateral Agent shall rely conclusively on an Officer’s Certificate and/or Opinion of Counsel to that effect provided to it by any Issuer or Guarantor, including upon its reasonable request without further inquiry);
(b) to the extent such Collateral is comprised of property leased to an Issuer or a Guarantor, upon termination or expiration of such lease;

(c) if the release of such Lien is approved, authorized or ratified in writing by the Holders holding more than 66.67% of the aggregate outstanding principal amount of the Notes;

(d) as required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Master Collateral Agent pursuant to the Collateral Documents; and

(e) if such assets become Excluded Property.

Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Issuers and the Guarantors in respect of) all interests retained by the Issuers and the Guarantors, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of this Indenture or the Collateral Documents.

During the continuance of a Senior Secured Debt Event of Default, the Master Collateral Agent shall not release any Lien permitted to be released under the Collateral Agency and Accounts Agreement and the other Senior Secured Debt Documents unless the Required Debtholders have consented to such release pursuant to an Act of Required Debtholders.

Section 13.04 Release upon Termination of the Issuers' Obligations.

Upon any discharge of Obligations with respect to the Notes, then (i) the application of the provisions of the Collateral Agency and Accounts Agreement to the Notes shall automatically cease, (ii) the Notes shall automatically no longer be secured by the Liens granted in favor of the Master Collateral Agent and (iii) the Master Collateral Agent, at the request and sole expense of the Grantors, shall, upon its receipt of the deliverables required by the Collateral Agency and Accounts Agreement, execute and deliver to the Grantors all releases or other documents reasonably necessary or desirable to evidence the foregoing.

Section 13.05 Suits to Protect the Collateral.

(a) Subject to the provisions of the Collateral Documents and the Intercreditor Agreements, the Trustee, without the consent of the Holders, on behalf of the Holders, may direct the Master Collateral Agent to take all actions it determines in order to:

(i) enforce any of the terms of the Collateral Documents; and

(ii) collect and receive any and all amounts payable in respect of the Obligations hereunder.
Subject to the provisions of the Collateral Documents and the Intercreditor Agreements, the Trustee and the Master Collateral Agent shall have power to institute and to maintain such suits and proceedings as the Trustee may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Collateral Documents or this Indenture, and such suits and proceedings as the Trustee and/or the Master Collateral Agent may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 13.05 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Master Collateral Agent.

Section 13.06 Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.

Subject to the provisions of the Collateral Documents and the Intercreditor Agreements, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

Section 13.07 Lien Sharing and Priority Confirmation.

Each Holder hereby agrees (i) that all Obligations will be and are secured equally and ratably by all Priority Liens (as defined in the Collateral Agency and Accounts Agreement) at any time granted by any Grantor to the Master Collateral Agent to secure any obligations in respect of any other Series of Senior Secured Debt (as defined in the Collateral Agency and Accounts Agreement), whether or not upon property otherwise constituting Collateral, and that all such Priority Liens will be enforceable by the Master Collateral Agent for the benefit of all holders of Senior Secured Debt Obligations (as defined in the Collateral Agency and Accounts Agreement) equally and ratably; and (ii) that each Holder is bound by the provisions of the Collateral Agency and Accounts Agreement, including the provisions relating to the ranking of Priority Liens and the order of application of proceeds from enforcement of Priority Liens; and each Holder consents to the terms of the Collateral Agency and Accounts Agreement and the Master Collateral Agent’s performance of, and directing the Master Collateral Agent to enter into and perform its obligations under, the Collateral Agency and Accounts Agreement and the other Senior Secured Debt Documents.

Section 13.08 Limited Recourse; Non-Petition.
Notwithstanding any other provision of this Indenture or any other document to which it may be a party, the obligations of each SPV Party from time to time and at any time hereunder are limited recourse obligations of such SPV Party and are payable solely from the assets thereof available at such time and amounts derived therefrom and following realization of the assets of such SPV Party, and application of the proceeds (including proceeds of assets upon which a Lien was purported to be granted) thereof in accordance with this Indenture, all obligations of and any remaining claims against such SPV Party hereunder or in connection herewith after such realization shall be extinguished and shall not thereafter revive. No recourse shall be had against any officer, director, employee, shareholder, administrator or incorporator of the SPV Parties or their respective successors or assigns for any amounts payable hereunder. Notwithstanding any other provision of this Indenture, no Person may, prior to the date which is one year (or if longer, any applicable preference period) and one day after the Discharge of Senior Secured Debt Obligations, institute against, or join any other Person in instituting against, the SPV Parties any insolvency or liquidation proceeding, or other proceedings under Cayman Islands, U.S. federal or state bankruptcy or similar laws. Nothing in this Section 13.08 shall preclude, or be deemed to estop, the parties hereto (i) from taking any action prior to the expiration of the aforementioned period in (A) any case or insolvency or liquidation proceeding voluntarily filed or commenced by any SPV Party or (B) any involuntary insolvency or liquidation proceeding filed or commenced by any other non-affiliated Person, or (ii) from commencing against any SPV Party or any of its property any legal action which is not an insolvency or liquidation proceeding. It is understood that the foregoing provisions of this Section shall not (x) prevent recourse to the assets of the SPV Parties (including, in the case of Loyalty Co and Hold Co 3, the Collateral and sums due or to become due under any security, instrument or agreement which is part of the Collateral) or (y) constitute a waiver, release or discharge of any Indebtedness or obligation secured hereby until all assets of SPV Parties (including, in the case of Loyalty Co and Hold Co 3, the Collateral and sums due or to become due under any security, instrument or agreement which is part of the Collateral) have been realized. It is further understood that the foregoing provisions of this Section 13.08 shall not limit the right of any Person to name any SPV Party as a party defendant in any proceeding or in the exercise of any other remedy hereunder, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Persons.

[Signature pages follow]
SKYMILES IP LTD.

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

DELTA AIR LINES, INC.

By: /s/ Kenneth W. Morge II
Name: Kenneth W. Morge II
Title: Vice President and Treasurer

[Signature Page to Indenture]
SKYMILES HOLDINGS LTD.

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

SKYMILES IP HOLDINGS LTD.

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

SKYMILES IP FINANCE LTD.

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

[Signature Page to Indenture]
U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ J. David Dever
Name: J. David Dever
Title: Vice President

[Signature Page to Indenture]

[OTHER THAN WITH RESPECT TO ONE OR MORE PURCHASERS ON THE CLOSING DATE WHICH HAVE MADE CERTAIN REPRESENTATIONS SATISFACTORY TO THE ISSUERS, BY ITS ACQUISITION OR ACCEPTANCE OF THIS NOTE OR ANY INTEREST HEREIN, THE HOLDER WILL BE DEEMED TO HAVE REPRESENTED, WARRANTED AND AGREED THAT EITHER: (A) IT IS NOT AND IS NOT DEEMED TO BE (I) AN EMPLOYEE BENEFIT PLAN SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), (II) A PLAN, ACCOUNT OR ARRANGEMENT DESCRIBED IN SECTION 4975(E)(1) OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), (III) AN ENTITY WHOSE UNDERLYING ASSETS ARE DEEMED TO INCLUDE ASSETS OF ANY SUCH EMPLOYEE BENEFIT PLAN, PLAN, ACCOUNT OR ARRANGEMENT (EACH OF THE FOREGOING, A “BENEFIT PLAN INVESTOR”), OR (IV) A PLAN, ACCOUNT OR ARRANGEMENT (SUCH AS A GOVERNMENTAL, CHURCH OR NON-U.S. PLAN) THAT IS SUBJECT TO ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER U.S. LAWS OR REGULATIONS THAT ARE SIMILAR TO THE FIDUCIARY RESPONSIBILITY PROVISIONS OF ERISA OR THE PROHIBITED TRANSACTION RULES OF SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE (“SIMILAR LAWS”); OR (B) THE ACQUISITION AND HOLDING OF THIS NOTE OR ANY INTEREST HEREIN BY THE HOLDER DO NOT AND WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION OF ANY SIMILAR LAWS.]
[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to
$______________]
4.500% Senior Secured Notes due 2025

No. ___

[$______________]

SKYMILES IP LTD. and
DELTA AIR LINES, INC.

promise to pay to CEDE & CO. or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of ______________ United States Dollars] on October 20, 2025.

Payment Dates: 20th calendar day of January, April, July and October, or if such day is not a Business Day, the next succeeding Business Day

Payment Record Dates: Each Business Day immediately preceding each Payment Date, except as otherwise set forth in the Indenture

1 Rule 144A Note CUSIP: 830867 AA5
Rule 144A Note ISIN: US830867AA59
Regulation S Note CUSIP: G8200V AA3
Regulation S Note ISIN: USG8200VAA38
IN WITNESS WHEREOF, the Issuers have caused this instrument to be duly executed.

Dated:

SKYMILES IP LTD.

By: ____________________________
Name: __________________________
Title: __________________________

DELTA AIR LINES, INC.

By: ____________________________
Name: __________________________
Title: __________________________
This is one of the Notes referred to in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated:

By: ____________________________
    Authorized Signatory

A-1-4
4.500% Senior Secured Notes due 2025

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST AND PRINCIPAL. The Issuers promise to pay principal on the Notes (based on the aggregate principal amount of the Notes on the Closing Date, i.e. $[_________]) in the amounts and on the Payment Dates set forth in the Indenture (the “Anticipated Principal Payment Schedule”), as such amounts may be increased or reduced, on a pro rata basis, from time to time, as provided in Section 2.01(d), Section 2.11, Section 3.07(e), Section 3.08(g), Section 3.09(k), and Section 4.34(f) of the Indenture. For the avoidance of doubt, any payment of premium due under the Indenture shall not reduce the Anticipated Principal Payment Schedule. To the extent not otherwise paid, the outstanding principal amount of the Notes shall be paid in full on October 20, 2025. The Notes will bear interest at a rate of 4.500% per annum on the outstanding principal amount thereof. Interest on the Notes is payable quarterly in arrears on each Payment Date and will accrue from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including the date of issuance, to but excluding such Payment Date, calculated on the basis of a 360-day year composed of twelve 30-day months. Interest will also be paid on each prepayment date, redemption date or repurchase date, as the case may be, as provided in the Indenture on the amount of principal so paid for the period from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including the date of issuance to but excluding such date of payment.

2. METHOD OF PAYMENT. The Issuers will pay interest, principal and premium, if any, on the Notes to the Persons who are registered Holders of Notes at the close of business on the Business Day immediately preceding the Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided, that payment by wire transfer of immediately available funds will be required with respect to interest, principal and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. U.S. Dollars are the sole currency of account and payment for all sums payable by the Issuers or any Guarantor under or in connection with the Notes, the Indenture and the Guarantees.

3. PAYING AGENT AND REGISTRAR. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to the Holders. Delta or any of its Subsidiaries may act in any such capacity.

4. INDENTURE. The Issuers issued the Notes under an Indenture, dated as of September 23, 2020 (the “Indenture”), among the Issuers, the Guarantors from time to time party thereto and the Trustee. This Note is one of a duly authorized issue of Notes of the Issuers designated as its 4.500% Senior Secured Notes due 2025. The Issuers shall be entitled to issue Additional Notes pursuant to Section 2.01 and Section 4.23 of the Indenture. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.
5. REDEMPTION, PREPAYMENT AND REPURCHASE. The Notes may be redeemed at the option of the Issuers and may be the subject of a Mandatory Prepayment Event, Parent Change of Control Offer and a Mandatory Repurchase Offer, as further provided in the Indenture. Except as provided in the Indenture, the Issuers shall not be required to make any mandatory prepayments, redemptions, repurchases or sinking fund payments with respect to the Notes.

6. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral multiples of $1.00 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for prepayment, redemption or tendered (and not withdrawn) for repurchase in connection with a Mandatory Prepayment Event, Parent Change of Control Offer, a Mandatory Repurchase Offer or other tender offer, respectively, in whole or in part, except for the unredeemed portion of any Note being redeemed in part.

7. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

8. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

9. EARLY AMORTIZATION, DEFAULTS AND REMEDIES. The Early Amortization Events and Events of Default relating to the Notes are defined in Section 6.01 and Section 6.02 of the Indenture, respectively. Upon the occurrence of an Early Amortization Event or Event of Default, as applicable, the rights and obligations of the Issuers, the Guarantors, the Trustee and the Holders shall be set forth in the applicable provisions of the Indenture.

10. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid for any purpose until authenticated by the manual signature of the Trustee or an authenticating agent.

12. NOTICES. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or other electronic transmission or overnight air courier guaranteeing next day delivery addressed as follows:

Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, GA 30354
Attention of:
(x) Treasurer, Dept. 856, Telex No.: , Telephone No.: 
(y) Chief Legal Officer, Dept. 971, Telex No.: , Telephone No.: 

If to the Trustee:
U.S. Bank National Association
1349 W Peachtree St. NW, Suite 1050
Atlanta, GA 30309
Attention: 
Telex No.: 
Telephone: 

The Issuers, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication sent to a Holder shall be mailed to the Holder at the Holder’s address as it appears on the registration books of the Registrar and shall be sufficiently given if so sent within the time prescribed.

Failure to send a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it.

Notwithstanding any other provision of the Indenture or this Note, where the Indenture or this Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Notes Depositary pursuant to the standing instructions from the Notes Depositary.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.
The Trustee agrees to accept and act upon instructions or directions pursuant to the Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the Issuers, any Guarantor or any Holder elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee’s understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.
ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: ____________________________________________

(Insert assignee’s legal name) ______________________________________________________

____________________________________

(Insert assignee’s soc. sec. or tax I.D. no.)

____________________________________

____________________________________

(Insert assignee’s name, address and zip code)

and irrevocably appoint __________________________________________________________

to transfer this Note on the books of the Issuers. The agent may substitute another to act for it.

Date: ____________________________

Your Signature:

____________________________________

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee:* ____________________________

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

A-1-9
OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 3.09 or 4.34 of the Indenture, check the appropriate box below:

[ ] Section 3.09  [ ] Section 4.34

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 3.09 or Section 4.34 of the Indenture, state the amount you elect to have purchased:

$_____________

Date: ____________________

Your Signature: __________________________________________
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: ________________________________

Signature Guarantee:* __________________________________

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).
The initial outstanding principal amount of this Global Note is $\$\quad\$$. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

<table>
<thead>
<tr>
<th>Date of Exchange</th>
<th>Amount of decrease in Principal Amount</th>
<th>Amount of increase in Principal Amount</th>
<th>Principal Amount of this Global Note following such decrease or increase</th>
<th>Signature of authorized officer of Trustee or Note Custodian</th>
</tr>
</thead>
</table>

* This schedule should be included only if the Note is issued in global form.
[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]


[OTHER THAN WITH RESPECT TO ONE OR MORE PURCHASERS ON THE CLOSING DATE WHICH HAVE MADE CERTAIN REPRESENTATIONS SATISFACTORY TO THE ISSUERS, BY ITS ACQUISITION OR ACCEPTANCE OF THIS NOTE OR ANY INTEREST HEREIN, THE HOLDER WILL BE DEEMED TO HAVE REPRESENTED, WARRANTED AND AGREED THAT EITHER: (A) IT IS NOT AND IS NOT DEEMED TO BE (I) AN EMPLOYEE BENEFIT PLAN SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), (II) A PLAN, ACCOUNT OR ARRANGEMENT DESCRIBED IN SECTION 4975(E)(1) OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), (III) AN ENTITY WHOSE UNDERLYING ASSETS ARE DEEMED TO INCLUDE ASSETS OF ANY SUCH EMPLOYEE BENEFIT PLAN, PLAN, ACCOUNT OR ARRANGEMENT (EACH OF THE FOREGOING, A “BENEFIT PLAN INVESTOR”), OR (IV) A PLAN, ACCOUNT OR ARRANGEMENT (SUCH AS A GOVERNMENTAL, CHURCH OR NON-U.S. PLAN) THAT IS SUBJECT TO ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER U.S. LAWS OR REGULATIONS THAT ARE SIMILAR TO THE FIDUCIARY RESPONSIBILITY PROVISIONS OF ERISA OR THE PROHIBITED TRANSACTION RULES OF SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE (“SIMILAR LAWS”); OR (B) THE ACQUISITION AND HOLDING OF THIS NOTE OR ANY INTEREST HEREIN BY THE HOLDER DO NOT AND WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION OF ANY SIMILAR LAWS.]
[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to

$______________

4.750% Senior Secured Notes due 2028

No. ___

[ $______________ ]

SKYMILES IP LTD. and
DELTA AIR LINES, INC.

promise to pay to CEDE & CO. or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of __________________________ United States Dollars] on October 20, 2028.

Payment Dates: 20th calendar day of January, April, July and October, or if such day is not a Business Day, the next succeeding Business Day

Payment Record Dates: Each Business Day immediately preceding each Payment Date, except as otherwise set forth in the Indenture.

1 Rule 144A Note CUSIP: 830867 AB3
   Rule 144A Note ISIN: US830867AB33
   Regulation S Note CUSIP: G8200V AB1
   Regulation S Note ISIN: USG8200VAB11
IN WITNESS HEREOF, the Issuers have caused this instrument to be duly executed.

Dated:

SKYMILES IP LTD.

By: ________________________________
   Name: ________________________________
   Title: ________________________________

DELTA AIR LINES, INC.

By: ________________________________
   Name: ________________________________
   Title: ________________________________

A-2-3
This is one of the Notes referred to in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated:

By: ____________________________________
    Authorized Signatory

A-2-4
4.750% Senior Secured Notes due 2028

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST AND PRINCIPAL. The Issuers promise to pay principal on the Notes (based on the aggregate principal amount of the Notes on the Closing Date, i.e. $[_________]) in the amounts and on the Payment Dates set forth in the Indenture (the “Anticipated Principal Payment Schedule”), as such amounts may be increased or reduced, on a pro rata basis, from time to time, as provided in Section 2.01(d), Section 2.11, Section 3.07(e), Section 3.08(g), Section 3.09(k), and Section 4.34(f) of the Indenture. For the avoidance of doubt, any payment of premium due under the Indenture shall not reduce the Anticipated Principal Payment Schedule. To the extent not otherwise paid, the outstanding principal amount of the Notes shall be paid in full on October 20, 2028. The Notes will bear interest at a rate of 4.750% per annum on the outstanding principal amount thereof. Interest on the Notes is payable quarterly in arrears on each Payment Date and will accrue from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including the date of issuance, to but excluding such Payment Date, calculated on the basis of a 360-day year composed of twelve 30-day months. Interest will also be paid on each prepayment date, redemption date or repurchase date, as the case may be, as provided in the Indenture on the amount of principal so paid for the period from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including the date of issuance to but excluding such date of payment.

2. METHOD OF PAYMENT. The Issuers will pay interest, principal and premium, if any, on the Notes to the Persons who are registered Holders of Notes at the close of business on the Business Day immediately preceding the Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided, that payment by wire transfer of immediately available funds will be required with respect to interest, principal and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. U.S. Dollars are the sole currency of account and payment for all sums payable by the Issuers or any Guarantor under or in connection with the Notes, the Indenture and the Guarantees.

3. PAYING AGENT AND REGISTRAR. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to the Holders. Delta or any of its Subsidiaries may act in any such capacity.

4. INDENTURE. The Issuers issued the Notes under an Indenture, dated as of September 23, 2020 (the “Indenture”), among the Issuers, the Guarantors from time to time party thereto and the Trustee. This Note is one of a duly authorized issue of Notes of the Issuers designated as its 4.750% Senior Secured Notes due 2028. The Issuers shall be entitled to issue Additional Notes pursuant to Section 2.01 and Section 4.23 of the Indenture. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.
5. **REDEMPTION, PREPAYMENT AND REPURCHASE.** The Notes may be redeemed at the option of the Issuers and may be the subject of a Mandatory Prepayment Event, Parent Change of Control Offer and a Mandatory Repurchase Offer, as further provided in the Indenture. Except as provided in the Indenture, the Issuers shall not be required to make any mandatory prepayments, redemptions, repurchases or sinking fund payments with respect to the Notes.

6. **DENOMINATIONS, TRANSFER, EXCHANGE.** The Notes are in registered form without coupons in minimum denominations of $2,000 and integral multiples of $1.00 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for prepayment, redemption or tendered (and not withdrawn) for repurchase in connection with a Mandatory Prepayment Event, Parent Change of Control Offer, a Mandatory Repurchase Offer or other tender offer, respectively, in whole or in part, except for the unredeemed portion of any Note being redeemed in part.

7. **PERSONS DEEMED OWNERS.** The registered Holder of a Note may be treated as its owner for all purposes.

8. **AMENDMENT, SUPPLEMENT AND WAIVER.** The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

9. **EARLY AMORTIZATION, DEFAULTS AND REMEDIES.** The Early Amortization Events and Events of Default relating to the Notes are defined in Section 6.01 and Section 6.02 of the Indenture, respectively. Upon the occurrence of an Early Amortization Event or Event of Default, as applicable, the rights and obligations of the Issuers, the Guarantors, the Trustee and the Holders shall be set forth in the applicable provisions of the Indenture.

10. **AUTHENTICATION.** This Note shall not be entitled to any benefit under the Indenture or be valid for any purpose until authenticated by the manual signature of the Trustee or an authenticating agent.

11. **GOVERNING LAW.** The Indenture, the Notes and the Guarantees shall be governed by, and construed in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.
12. NOTICES. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or other electronic transmission or overnight air courier guaranteeing next day delivery addressed as follows:

Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, GA 30354
Attention of:
(x) Treasurer, Dept. 856, Telecopier No.: , Telephone No.:
(y) Chief Legal Officer, Dept. 971, Telecopier No.: , Telephone No.:

If to the Trustee:
U.S. Bank National Association
1349 W Peachtree St. NW, Suite 1050
Atlanta, GA 30309
Attention:
Telecopier:
Telephone:

The Issuers, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication sent to a Holder shall be mailed to the Holder at the Holder’s address as it appears on the registration books of the Registrar and shall be sufficiently given if so sent within the time prescribed.

Failure to send a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it.

Notwithstanding any other provision of the Indenture or this Note, where the Indenture or this Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Notes Depositary pursuant to the standing instructions from the Notes Depositary.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.
The Trustee agrees to accept and act upon instructions or directions pursuant to the Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the Issuers, any Guarantor or any Holder elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee’s understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.
ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: ________________________________ ________________________________

(Insert assignee’s legal name)

______________________________
(Insert assignee’s soc. sec. or tax I.D. no.)

______________________________

(Print or type assignee’s name, address and zip code)

and irrevocably appoint

______________________________________________________________

to transfer this Note on the books of the Issuers. The agent may substitute another to act for it.

Date: __________________________

Your Signature: ________________________________

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee:* ________________________________

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

A-2-9
OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Sections 3.09 or 4.34 of the Indenture, check the appropriate box below:

[ ] Section 3.09  [ ] Section 4.34

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 3.09 or Section 4.34 of the Indenture, state the amount you elect to have purchased:

$_______________

Date: ______________________

Your Signature: ____________________________________________
(Sign exactly as your name appears on the face of this Note)

Tax Identification No. _________________________________________

Signature Guarantee:* ____________________________

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

A-2-10
SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $__________. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

<table>
<thead>
<tr>
<th>Date of Exchange</th>
<th>Amount of decrease in Principal Amount</th>
<th>Amount of increase in Principal Amount of this Global Note following such decrease or increase</th>
<th>Signature of authorized officer of Trustee or Note Custodian</th>
</tr>
</thead>
</table>

* This schedule should be included only if the Note is issued in global form.

A-2-11
TERM LOAN CREDIT AND GUARANTY AGREEMENT

dated as of September 23, 2020

among

SKYMILES IP LTD.
and
DELTA AIR LINES, INC.,
as Borrowers,

SKYMILES HOLDINGS LTD.,
SKYMILES IP HOLDINGS LTD.
and
SKYMILES IP FINANCE LTD.,
as Guarantors,

THE LENDERS PARTY HERETO,

BARCLAYS BANK PLC,
as Administrative Agent,

GOLDMAN SACHS LENDING PARTNERS LLC,
as Sole Structuring Agent,

BARCLAYS BANK PLC, GOLDMAN SACHS LENDING PARTNERS LLC,
JP MORGAN CHASE BANK, N.A., and MORGAN STANLEY SENIOR FUNDING INC.,
as Joint Lead Arrangers,

BOFA SECURITIES, INC., BBVA SECURITIES INC.,
BNP PARIBAS, CITIGROUP GLOBAL MARKETS INC.,
CREDIT SUISSE LOAN FUNDING LLC, DEUTSCHE BANK SECURITIES INC.,
FIFTH THIRD BANK, NATIONAL ASSOCIATION, PNC CAPITAL MARKETS LLC,
SUMITOMO MITSUI BANKING CORPORATION,
STANDARD CHARTERED BANK, U.S. BANK, NATIONAL ASSOCIATION,
WELLS FARGO SECURITIES, LLC,
as Joint Bookrunners,

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK and
NATIXIS, NEW YORK BRANCH
As Co-Managers,

and

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Administrator
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TERM LOAN CREDIT AND GUARANTY AGREEMENT, dated as of September 23, 2020, among SKYMILES IP LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands, as borrower (“Loyalty Co”), DELTA AIR LINES, INC., a Delaware corporation, as co-borrower (“Delta” and together with Loyalty Co, the “Borrowers”), each of the direct and indirect Subsidiaries of Delta from time to time party hereto as a Guarantor, each of the several banks and other financial institutions or entities from time to time party hereto as a lender (the “Lenders”), BARCLAYS BANK PLC, as administrative agent for the Lenders (together with its permitted successors and assigns in such capacity, the “Administrative Agent”), BARCLAYS BANK PLC, GOLDMAN SACHS LENDING PARTNERS LLC, J.P. MORGAN CHASE BANK, N.A. and MORGAN STANLEY SENIOR FUNDING INC., as joint lead arrangers (in such capacity, the “Lead Arrangers”) and U.S. BANK NATIONAL ASSOCIATION, as collateral administrator (in such capacity, together with its permitted successor and assigns in such capacity, the “Collateral Administrator”).

INTRODUCTORY STATEMENT

The Borrowers have applied to the Lenders for a term loan facility of $3.0 billion as set forth herein.

The proceeds of the Term Loans will be used to pay related transaction costs, fees and expenses, to fund the Reserve Account (as defined below) and to fund the Collection Account (as defined below) and such proceeds of the Term Loans deposited into the Collection Account will be distributed by Loyalty Co to HoldCo 3 and subsequently by HoldCo 3 to HoldCo 2 to provide the Delta Intercompany Loan (as defined below) to Delta.

Accordingly, the parties hereto hereby agree as follows:

SECTION 1.
DEFINITIONS

Section 1.01 Defined Terms. Unless otherwise defined herein, terms defined in the Collateral Agency and Accounts Agreement shall have the same meaning when used herein (including in the introductory statement) notwithstanding any termination thereof. When used herein, the following terms shall have the following meanings:

“40 Act” shall mean the Investment Company Act of 1940, as amended.

“Account Control Agreements” shall mean each multi-party security and control agreement entered into by any Grantor to satisfy the obligation of such Grantor as set forth in any Senior Secured Debt Document, the Master Collateral Agent and a financial institution which maintains one or more Deposit Accounts or Securities Accounts of such Grantor that have been pledged as Collateral hereunder or under any other Loan Document, in each case giving the Master Collateral Agent or Collateral Administrator, as applicable, “control” (as defined in Section 9-104 or 9-106 of the UCC) over the applicable account and in form and substance reasonably satisfactory to the Collateral Controlling Party and the Master Collateral Agent.
“Administrative Agent” shall have the meaning set forth in the first paragraph of this Agreement.

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

“Affiliate” shall mean, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, a Person (a “Controlled Person”) shall be deemed to be “controlled by” another Person (a “Controlling Person”) if the Controlling Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of the Controlled Person whether by contract or otherwise; provided that the PBGC shall not be an Affiliate of any Borrower or any Guarantor.

“Agents” shall mean each of the Administrative Agent, the Master Collateral Agent, the Collateral Administrator and the Depository.

“Aggregate Exposure” shall mean, with respect to any Lender at any time, an amount equal to (a) until the funding of the Initial Term Loans, the aggregate amount of such Lender’s Term Loan Commitments at such time and (b) thereafter the sum of, (i) the aggregate then outstanding principal amount of such Lender’s Term Loans and (ii) the aggregate amount of such Lender’s Term Loan Commitments with respect to each Class of Term Loans (if any) then in effect.

“Aggregate Exposure Percentage” shall mean, with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Aggregate Reserve Account Required Balance” shall have the meaning set forth in the Collateral Agency and Accounts Agreement.

“Agreement” shall mean this Term Loan Credit and Guaranty Agreement.

“Airport Authority” shall mean any city or any public or private board or other body or organization chartered or otherwise established for the purpose of administering, operating or managing airports or related facilities, which in each case is an owner, administrator, operator or manager of one or more airports or related facilities.

“All-In Yield” shall mean, as to any debt, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, a LIBOR or Alternate Base Rate, or otherwise, in each case, incurred or payable by the Borrowers generally to all the lenders of such Indebtedness; provided that upfront fees and original issue discount shall be equated to an interest rate based upon an assumed four year average life to maturity (e.g., 100 basis points of original issue discount equals 25 basis points of interest rate margin for a four year average life to maturity); provided, further, that “All-In Yield” shall exclude any structuring, ticking, unused line, commitment, amendment, consent, underwriting, syndication and arranger fees, other similar fees and other fees not generally paid to all lenders and, if applicable, consent fees paid generally to consenting lenders.
“Alternate Base Rate” shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the sum of the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%; provided, in no event shall the Alternate Base Rate be less than one percent (1%). Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“AmEx Co-Branded Agreement” shall mean that certain Amended and Restated Co-Branded Credit Card Program Agreement, dated as of March 31, 2019, by and among American Express Travel Related Services Company, Inc., American Express National Bank and Delta.

“AmEx Membership Rewards Agreement” shall mean that certain Amended and Restated Membership Rewards Agreement, dated as of March 31, 2019, by and among American Express Travel Related Services Company, Inc. and Delta.

“Anti-Corruption Laws” shall mean all laws, rules and regulations of the United States applicable to Delta or its Subsidiaries from time to time intended to prevent or restrict bribery or corruption.

“Applicable Law” shall have the meaning given such term in Section 10.13.

“Applicable Margin” shall mean a rate per annum equal to 3.75% (provided that when used in connection with the Alternate Base Rate “Applicable Margin” shall mean a rate per annum equal to 2.75%).

“Applicable Trigger Event” shall mean, any voluntary prepayment of the Term Loans or any mandatory prepayment under clauses (a) or (e) of Section 2.12 of all, or any part, of the principal balance of any Term Loan (including any distribution in respect of the Term Loans and any refinancing thereof), in each case, whether in whole or in part and whether before or after the occurrence of an Event of Default or the commencement of any institution of any proceeding under any Bankruptcy Law. For the avoidance of doubt, any prepayment as a result of an Early Amortization Event or an Event of Default (including as a result of the commencement of any institution of any proceeding under any Bankruptcy Law) shall not constitute an “Applicable Trigger Event”.

“Approved Fund” shall have the meaning given such term in Section 10.02(b).

“Approved Independent Director List” shall mean the list of no fewer than four (4) individuals that are eligible to act as an Independent Director for the SPV Parties attached hereto as Schedule 1.01(d), which may be updated from time to time by the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) by providing written notice to the Borrowers; provided that, with respect to the initial list attached hereto as Schedule 1.01(d) and any updates thereto made by the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) thereafter, Loyalty Co may, upon providing thirty (30) days’ prior written notice to the Master Collateral Agent, reject up to two (2) listed individuals for any reason, and the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may thereafter amend the list to replace such individuals; provided further that in all cases, the Approved Independent Director List shall only include individuals who satisfy the Independent Director Criteria.
“Approved Replacement Independent Director” shall mean, at any time, each individual listed on the Approved Independent Director List at such time; provided that if the ordinary shareholder(s) of an SPV Party reasonably disagrees that none of the individuals listed on the Approved Independent Director List (i) satisfy clause (c) in the definition of the Independent Director Criteria or (ii) are willing to act as Independent Director at a compensation level reasonably customary for directors of this type (it being agreed that the compensation level commensurate with that of the Independent Director the vacancy of which is being filled shall be deemed reasonably customary), then the ordinary shareholder(s) of the relevant SPV Party may appoint any other Person who meets the Independent Director Criteria as a replacement Independent Director.

“ARB Indebtedness” shall mean, with respect to Delta or any of its Subsidiaries, without duplication, all Indebtedness or obligations of Delta or such Subsidiary created or arising with respect to any limited recourse revenue bonds issued for the purpose of financing or refinancing improvements to, or the construction or acquisition of, airport and other related facilities and equipment, the use or construction of which qualifies and renders interest on such bonds exempt from certain federal or state taxes.

“Archived SkyMiles Member Profile Data” shall have the meaning given to such term in Section 4.03(b).

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.02), and accepted by the Administrative Agent, substantially in the form of Exhibit C.

“Assumption Motion” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Assumption Order” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Available Funds” shall mean, with respect to any Payment Date, the sum of (i) the Term Loans’ Pro Rata Share of funds allocated pursuant to the Collateral Agency and Accounts Agreement for such Payment Date and transferred from the Collection Account to the Payment Account on or prior to such Payment Date pursuant to the Collateral Agency and Accounts Agreement, (ii) the Term Loans’ Pro Rata Share of any amounts transferred to the Payment Account from the Reserve Account for application on such Payment Date, and (iii) the Term Loans’ Pro Rata Share of any other amount deposited into the Payment Account by or on behalf of any Borrower on or prior to such Payment Date.
“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” shall mean (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).


“Bankruptcy Court” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Bankruptcy Event” shall mean, with respect to any Person, such Person becomes the subject of a bankruptcy, reorganization, foreclosure, arrangement or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors, liquidator, provisional liquidator or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person 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 Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Bankruptcy Law” shall mean the Bankruptcy Code or any similar federal, state or foreign law relating to reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other debtor relief, including, without limitation, Part V and sections 86-88 (inclusive) of the Companies Law (as amended) of the Cayman Islands and the Companies Winding Up Rules 2018 of the Cayman Islands, each as amended from time to time, and any bankruptcy, insolvency, winding up, reorganization or similar law enacted under the laws of the Cayman Islands or any other applicable jurisdiction.
“Benchmark Replacement” shall mean the sum of: (a) the alternate benchmark rate (which may be a SOFR-Based Rate) that has been selected by the Administrative Agent and the Borrowers giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBO Rate 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 1.0%, the Benchmark Replacement will be deemed to be 1.0% for the purposes of this Agreement; provided further that any such Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Adjustment” shall mean, with respect to any replacement of LIBO 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 Borrowers 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 LIBO Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body 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 LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to 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 in consultation with the Borrower 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 in consultation with the Borrower is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” shall mean the earlier to occur of the following events with respect to LIBO Rate:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBO Rate permanently or indefinitely ceases to provide LIBO Rate; and

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.
“**Benchmark Transition Event**” shall mean the occurrence of one or more of the following events with respect to LIBO Rate:

(a) a public statement or publication of information by or on behalf of the administrator of LIBO Rate announcing that such administrator has ceased or will cease to provide LIBO Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBO Rate;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBO Rate, a resolution authority with jurisdiction over the administrator for LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for LIBO Rate, which states that the administrator of LIBO Rate has ceased or will cease to provide LIBO Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBO Rate; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of LIBO Rate announcing that LIBO Rate is no longer representative and such circumstances are unlikely to be temporary.

“**Benchmark Transition Start Date**” shall mean (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, and, in each case, consented to by the Borrower in writing and notified in writing to the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders, as applicable.

“**Benchmark Unavailability Period**” shall mean, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBO Rate and solely to the extent that LIBO 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 LIBO Rate for all purposes hereunder in accordance with Section 2.02 and (y) ending at the time that a Benchmark Replacement has replaced LIBO Rate for all purposes hereunder pursuant to Section 2.02.

“**Beneficial Owner**” shall have the meaning set forth in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms “**Beneficially Owns**” and “**Beneficially Owned**” have a corresponding meaning.

“**Beneficial Ownership Certification**” shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.
“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan.”

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

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States.

“Board of Directors” shall mean:

1. with respect to a corporation or an exempted company, the board of directors of the corporation or exempted company, as applicable, or any committee thereof duly authorized to act on behalf of such board;

2. with respect to a partnership, the board of directors of the general partner of the partnership;

3. with respect to a limited liability company, the managing member or members, manager or managers or any controlling committee of managing members or managers thereof; and

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

“Borrowers” shall have the meaning set forth in the first paragraph of this Agreement.

“Borrowing” shall mean the incurrence of a single Class of Term Loans made from all the applicable Lenders on a single date.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City, or such other domestic city in which the corporate trust office of the Collateral Administrator, Master Collateral Agent or the Depositary is located (in each case, as set forth in Section 10.01(a), as such locations may be updated pursuant to Section 10.01(c)) are required or authorized to remain closed; provided, that, when used in connection with the borrowing or repayment of a Eurodollar Term Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits on the London interbank market.

“CS Excess Proceeds” shall have the meaning set forth in Section 2.12(c).
“CS Threshold Amount” shall have the meaning set forth in Section 2.12(c).

“Capital Markets Offering” shall mean any offering of “securities” (as defined under the Securities Act) in (a) a public offering registered under the Securities Act, or (b) an offering not required to be registered under the Securities Act (including, without limitation, a private placement under Section 4(a)(2) of the Securities Act, an exempt offering pursuant to Rule 144A and/or Regulation S of the Securities Act and an offering of exempt securities).

“Cash Bond” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Cash Equivalents” shall mean:

1. direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the federal government of the United States (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

2. direct obligations of state, provincial and local government entities, in each case maturing within one year from the date of acquisition thereof, which have, at the date of such acquisition, a rating of at least A- (or the equivalent thereof) from S&P or Fitch or A-3 (or the equivalent thereof) from Moody’s;

3. obligations of domestic or foreign companies and their subsidiaries, including, without limitation, bills, notes, bonds, debentures, and mortgage-backed securities, in each case maturing within one year from the date of acquisition thereof and which have, at the date of such acquisition, a rating of at least A- (or the equivalent thereof) from S&P or Fitch or A-3 (or the equivalent thereof) from Moody’s;

4. commercial paper maturing within 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-2 (or the equivalent thereof) from S&P or Fitch or P-2 (or the equivalent thereof) from Moody’s;

5. certificates of deposit, banker’s acceptances, banker’s discount notes, time deposits, US Dollar time deposits or overnight bank deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any other commercial bank of recognized standing organized under the laws of the United States or any state thereof or the District of Columbia that has a combined capital and surplus and undivided profits of not less than $100.0 million;

6. fully collateralized repurchase agreements with a term of not more than six months for underlying securities that would otherwise be eligible for investment;

7. Investments in money in an investment company organized under the 40 Act, or in pooled accounts or funds offered through mutual funds, investment advisors, banks and brokerage houses which invest 95% of their assets in obligations of the type described in clauses (1) through (6) above, including money market funds or short-term and intermediate bonds funds;
money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the 40 Act or with the criteria set forth in National Instrument 81-102—Mutual Funds, as amended, (ii) are rated AAA (or the equivalent thereof) by S&P or Fitch or Aaa (or the equivalent thereof) by Moody’s and (iii) have portfolio assets of at least $500.0 million;

deposits available for withdrawal on demand with commercial banks organized in the United States having capital and surplus in excess of $100.0 million;

securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A- by S&P or Fitch or A3 by Moody’s; and

any other securities or pools of securities that are classified under GAAP as cash equivalents or short-term investments on a balance sheet.

“Cayman Share Mortgage” shall mean the equitable mortgage over shares in Loyalty Co, dated the Closing Date, between HoldCo 3 and the Master Collateral Agent.

“Certificate Re: Non-Bank Status” shall have the meaning given to it in Section 2.16(g).

“CFC” shall mean “controlled foreign corporation” within the meaning of Section 957(a) of the Code; provided, for the avoidance of doubt, that no SPV Party shall be considered to be a CFC.

“Change in Law” shall mean, after the date hereof, (a) the adoption of any law, rule or regulation after the date of this Agreement (including any request, rule, regulation, guideline, requirement or directive 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 II or Basel III) or (b) compliance by any Lender (or, for purposes of Section 2.14(b), by any lending office of such Lender through which Term Loans are issued or maintained or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided, notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted, issued or implemented.
“Class”, when used in reference to any Term Loan or Borrowing, shall refer to whether such Term Loan, or the Term Loans comprising such Borrowing, are Initial Term Loans or Incremental Term Loans that are not Initial Term Loans.

“Closing Date” shall mean the date on which this Agreement has been executed and the conditions precedent set forth in Section 4.01 have been satisfied or waived.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean the assets and properties of the Grantors upon which Liens have been granted to the Master Collateral Agent or the Collateral Administrator to secure the Obligations, including without limitation all of the “Collateral” as defined in the Collateral Documents, but excluding all such assets and properties released from such Liens pursuant to the applicable Collateral Document or otherwise constituting Excluded Property.

“Collateral Administrator” shall have the meaning set forth in the first paragraph of this Agreement.

“Collateral Administrator and Master Collateral Agent Fee Letter” shall have the meaning set forth in Section 2.19.

“Collateral Agency and Accounts Agreement” shall mean that certain Collateral Agency and Accounts Agreement dated as of the Closing Date, among the Borrowers, each Grantor from time to time party thereto, the Depositary, the Collateral Administrator, each other Senior Secured Debt Representative (as defined therein) from time to time party thereto and the Master Collateral Agent, substantially in the form attached as Exhibit A.

“Collateral Documents” shall mean, collectively, any Account Control Agreements, the Security Agreement, each IP Security Agreement, the Collateral Agency and Accounts Agreement, the Cayman Share Mortgage and other agreements, instruments or documents that create or purport to create a Lien in favor of the Master Collateral Agent for the benefit of the Secured Parties, in each case, so long as such agreement, instrument or document shall not have been terminated in accordance with its terms.

“Collateral Sale” shall mean the Disposition of any Collateral.

“Collection Account” shall mean the account of Loyalty Co held at JPMorgan Chase Bank, N.A. with the account name “SkyMiles IP Ltd.” that is established and maintained at the New York office of JPMorgan Chase Bank, N.A. and under the control of the Master Collateral Agent pursuant to an Account Control Agreement.

“Collections” shall mean, with respect to any Quarterly Reporting Period, the aggregate amount of Transaction Revenues deposited in the Collection Account during such Quarterly Reporting Period. For the avoidance of doubt, (i) Permitted Deposit Amounts and (ii) any other funds in the Collection Account not constituting Transaction Revenues shall not constitute Collections.
“**Composite Marks**” shall mean the Intellectual Property listed on Schedule 1.01(e) as being Composite Marks.

“**Compounded SOFR**” shall mean the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with:

(a) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; or

(b) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent determines in its reasonable discretion are substantially consistent with any evolving or then-prevailing market convention for determining compounded SOFR for U.S. dollar-denominated syndicated credit facilities at such time;

provided that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (a) or clause (b) above is not administratively feasible for the Administrative Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of “Benchmark Replacement”.

“**Contingent Payment Event**” shall mean any indemnity, termination payment or liquidated damages under a SkyMiles Agreement, an IP Agreement or an Intercompany Agreement.

“**Contribution Agreements**” shall mean each of the agreements set forth on Schedule 1.01(a) and each other contribution, assignment or transfer agreement entered into after the date hereof pursuant to which Delta contributes, assigns or transfers (i) all of Delta’s rights, title and interest in and to the SkyMiles Intellectual Property that it owns or purports to own, or later develops or acquires and owns (excluding the Composite Marks and the Specified Intellectual Property), (ii) all of Delta’s rights to establish, create, organize, initiate, participate, operate, assist, benefit from, promote or otherwise be involved in or associated with, in any capacity, the SkyMiles Program or any other customer loyalty miles program or any similar customer loyalty program (other than with respect to a Specified Minority Owned Program or a Permitted Acquisition Loyalty Program), and (iii) all of Delta’s rights, title and interest in, to and under the SkyMiles Agreements (other than the Intercompany Agreements), in each case, directly or indirectly to Loyalty Co.
“Corresponding Tenor” with respect to a Benchmark Replacement shall mean a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period.

“Covered Entity” shall mean any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” shall have the meaning set forth in Section 10.21.

“Cure Amounts” shall have the meaning set forth in Section 2.24.

“Currency” shall mean miles, points and/or other units that are a medium of exchange used solely within a Loyalty Program.

“Data Protection Laws” shall mean all laws, rules and regulations applicable to each applicable Loan Party or Subsidiary thereof regarding privacy, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), processing, encryption, security, safeguarding, loss, disclosure and use of Personal Data (including Personal Data of employees, contractors, customers, loan applicants and third parties), On-line Tracking Data, and email and mobile communications, including any approvals or notices required in connection therewith.

“Dated SkyMiles Member Profile Data” shall mean, as of any date, SkyMiles Member Profile Data set forth in clauses (d) and (e) of the definition thereof that was generated more than three years before such date.

“Day Count Fraction” shall mean, the actual number of days elapsed over a year of 360 days (or, when the Alternate Base Rate is applicable, a year of 365 days or 366 days in a leap year).

“Debtors” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Deeds of Undertaking” shall mean (i) the deed of undertaking to be entered into on or about the date hereof among Loyalty Co, HoldCo 3, the Master Collateral Agent and Walkers Fiduciary Limited, (ii) the deed of undertaking to be entered into on or about the date hereof among HoldCo 3, HoldCo 2, the Master Collateral Agent and Walkers Fiduciary Limited, (iii) the deed of undertaking to be entered into on or about the date hereof among HoldCo 2, HoldCo 1, the Master Collateral Agent and Walkers Fiduciary Limited and (iv) the deed of undertaking to be entered into on or about the date hereof among HoldCo 1, Delta, the Master Collateral Agent and Walkers Fiduciary Limited.

“Default” shall mean any event that, unless cured or waived, is, or with the passage of time or the giving of notice or both would be an Event of Default.
“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” shall mean, at any time, any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid by it hereunder, to fund or pay (x) any portion of the Term Loans or (y) any other amount required to be paid by it hereunder to the Administrative Agent or any other Lender (or its banking Affiliates), unless, in the case of clause (x) above, such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrowers, the Administrative Agent or any other Lender in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations (i) under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or (ii) on or prior to the Closing Date, generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, any other Lender or a Borrower, acting in good faith, to provide a confirmation in writing from an authorized officer or other authorized representative of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Term Loans under this Agreement, which request shall only have been made after the conditions precedent to borrowings have been met, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s, such other Lender’s or the Borrowers’, as applicable, receipt of such confirmation in form and substance satisfactory to it and the Administrative Agent, or (d) has become, or has had its Parent Company become, the subject of a Bankruptcy Event or a Bail-In Action. If the Administrative Agent determines that a Lender is a Defaulting Lender under any of clauses (a) through (d) above, such Lender will be deemed to be a Defaulting Lender upon notification of such determination by the Administrative Agent to the Borrowers and the Lenders.

“Default Interest” shall have the meaning specified in Section 2.08.

“Delta” shall have the meaning set forth in the first paragraph of this Agreement.

“Delta Agreements” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Delta Air Line Business Agreements” shall have the meaning given to such term in the definition of “SkyMiles Agreements”.

“Delta Case Milestones” shall mean that, after the commencement of any institution of any proceeding under any Bankruptcy Law (the “Bankruptcy Case”) of Delta:

(a) each Loan Party shall continue to perform its respective obligations under the Loan Documents, the Delta Intercompany Note, the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Loan Party is party (collectively, the “Delta Agreements”) and there shall be no material interruption in the flow of funds under the Delta Agreements in accordance with the terms thereunder; provided, that (i) the performance by the Loan Parties under this clause (a) shall in all respects be subject to any applicable materiality qualifiers, cure rights and/or grace periods provided for under the respective Delta Agreements, and (ii) the Loan Parties shall have forty-five (45) days from the Petition Date (as defined below) to cure any failure to perform that requires court authorization to perform;
(b) the debtors in respect of the Bankruptcy Case (the “Debtors”) shall file with the applicable U.S. bankruptcy court (the “Bankruptcy Court”), within fifteen (15) days of the date of petition in respect of the Bankruptcy Case (the “Petition Date”), a customary and reasonable motion to assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Loan Party is party under section 365 of the Bankruptcy Code and continue to perform all obligations under all the Delta Agreements (the “Assumption Motion”), and shall thereafter pursue (including by contesting any objections to) the approval of the Assumption Motion;

(c) the Bankruptcy Court shall have entered a customary and reasonable final order (the “Assumption Order”) granting the Assumption Motion, within sixty (60) days after the Petition Date, and such Assumption Order shall not be amended, stayed (unless the party seeking a stay has posted a cash bond pledged in favor of the Secured Parties and the secured parties in respect of any other Priority Lien Debt (the “Cash Bond”) in an amount equal to or greater than the maximum amount of the License Termination Payment (as defined in the Delta IP License) that could be asserted if the Delta IP License were to terminate (without reduction for any potential mitigation)), vacated, or reversed;

(d) the parties agree and acknowledge that the Assumption Motion and Assumption Order shall be customary and reasonable and the Assumption Order shall provide, among other things, that: (i) the Debtors are authorized to assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Loan Party is party and perform all obligations under the Delta Agreements and implement actions contemplated thereby and, pursuant to the Assumption Order, will assume the Intercompany Agreements, the IP Agreements and all Material SkyMiles Agreements to which such Loan Party is party pursuant to section 365 of the Bankruptcy Code; (ii) the Delta Agreements are binding and enforceable against the parties thereto in accordance with their terms, without exception or amendment; (iii) any amounts payable under the Delta Agreements are actual and necessary costs and expenses of preserving the Debtors’ estates and shall be entitled to priority as an allowed administrative expenses of the Debtors pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code; (iv) the Debtors must cure any defaults under the Delta Agreements as a condition to assumption; and (v) the Debtors are authorized to take any action necessary to implement the terms of the Assumption Order;

(e) each of the Debtors and each other Loan Party (i) shall not take any action to materially interfere with the assumption of or performance under the Delta Agreements, or support any other Person to take any such action; and (ii) shall take all steps commercially reasonably necessary, to contest any action that would materially interfere with the Delta Agreements, including, without limitation, litigating any objections and/or appeals;
(f) each of the Debtors and each other Loan Party (i) shall not file any motion seeking to avoid, disallow, subordinate, or recharacterize any obligation under the Delta Agreements and (ii) shall take all steps commercially reasonably necessary, to contest any action that would seek to avoid, disallow, subordinate, or recharacterize any obligation under the Delta Agreements, including, without limitation, litigating any objections and/or appeals;

(g) in the event there is an appeal of the Assumption Order:

(i) if the appeal has not been dismissed within sixty (60) days, then (A) the Aggregate Reserve Account Required Balance shall increase by $15 million per month as long as such appeal is pending, up to a cap of $300 million, and (B) such additional amounts accrued pursuant to clause (A) above shall be released to Delta within five (5) Business Days after the end of such appeal; and

(ii) the Debtors shall pursue a court order requiring any appellants to post a Cash Bond in an amount equal to or greater than the maximum amount of the License Termination Payment (as defined in the Delta IP License) that could be asserted if the Delta IP License were to terminate (without reduction for any potential mitigation), to an account held solely for the sole benefit of the Secured Parties and the secured parties in respect of any other Priority Lien Debt;

(h) the Bankruptcy Case shall not, and is not converted into, a case under chapter 7 of the Bankruptcy Code; and

(i) any plan of reorganization filed or supported by any Debtor shall expressly provide for assumption or reinstatement, as applicable, of all of the Delta Agreements and reinstatement or replacement of each of the related obligations and/or guarantees, subject to applicable cure periods.

For the avoidance of doubt, notwithstanding the foregoing, during the pendency of and following any stay or appeal of the Assumption Order, each Loan Party must continue to perform all obligations under the Delta Agreements, including making any and all payments under the Delta Agreements in accordance with the terms thereof and as described above and, in the event of any such payment default (subject to any applicable cure or grace periods under the applicable Delta Agreements), nothing shall limit any of the Lenders’ rights and remedies including but not limited to any termination rights under the Delta Agreements.

“Delta Intellectual Property” shall mean any and all Intellectual Property used in connection with the operation of the Delta airline business that, even if used in connection with the SkyMiles Program, would be required or necessary to operate the Delta airline business in the absence of a Loyalty Program, including the following Intellectual Property: (a) the DELTA and DELTA AIR LINES marks and DAL as a stock symbol, together with any translations, logos or designs for the foregoing; (b) the delta.com domain name registration and website (including all content and source code that is not otherwise SkyMiles Intellectual Property) and Delta’s social media accounts; and (c) the Delta mobile app.
**Delta Intercompany Loan** shall mean one or more loans made by HoldCo 2 to Delta pursuant to the Delta Intercompany Note with the proceeds of the Term Loans and notes issued under the Indenture that have been distributed to HoldCo 2.

**Delta Intercompany Note** shall mean the promissory note(s) evidencing the Delta Intercompany Loan.

**Delta IP License** shall mean that certain Intellectual Property Sublicense Agreement between HoldCo 3, as licensor, and Delta, as licensee, in the form attached as Exhibit G-2.

**Delta Traveler Related Data** shall mean (a) data generated, produced or acquired as a result of the issuance, modification or cancellation of customer tickets from Delta or for flights on Delta, including data in or derived from “Passenger Name Records” (including name and contact information) associated with flights on Delta, (b) payment-related information, (c) customer login to the delta.com website or any successor website and (d) a customer’s flight-related experience, but excluding in the case of clause (a) information that would not be generated, produced or acquired in the absence of a Loyalty Program. The parties acknowledge and agree that customer name, contact information (including name, mailing address, email address, and phone numbers), SkyMiles ID number or login and communication and promotion opt-ins (as described in clause (b) of the definition of “SkyMiles Member Profile Data”) (to the extent that such communication and promotion opt-ins are not specific to the SkyMiles Program) are included in both SkyMiles Customer Data and Delta Traveler Related Data (it being understood that Delta shall be entitled to continue marketing its airline business in the ordinary course).

**Depositary** shall mean U.S. Bank National Association in its capacity as Depositary under the Loan Documents.

**Determination Date** shall mean, with respect to any Quarterly Reporting Period, the Payment Date occurring in the immediately succeeding fiscal quarter, unless an Early Amortization Period is in effect as of the last day of such Quarterly Reporting Period, in which case it shall mean the third Business Day preceding such Payment Date.

**Direction of Payment** shall mean a notice to each counterparty of a SkyMiles Agreement, substantially in the form of Exhibit F, which shall include instructions to such counterparties to pay all amounts due to Delta, Loyalty Co or any of their respective Affiliates under the applicable SkyMiles Agreement directly to the Collection Account.

**Director Services Agreements** shall mean (i) the director and share trustee services agreement dated on or about the Closing Date among Delta, Loyalty Co and Walkers Fiduciary Limited, (ii) the director services agreement dated on or about the Closing Date among Loyalty Co, the Loan Party Director (as defined therein) party thereto and Delta, (iii) the director services agreement dated on or about the Closing Date among HoldCo 3, the Loan Party Director (as defined therein) party thereto and Loyalty Co, (iv) the director services agreement dated on or about the Closing Date among HoldCo 2, the Loan Party Director (as defined therein) party thereto and Loyalty Co and (v) the director services agreement dated on or about the Closing Date among HoldCo 1, the Loan Party Director (as defined therein) party thereto and Loyalty Co.
“Disposition” shall mean, with respect to any property, any sale, lease, sale and leaseback, conveyance, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Lender” shall mean any Person that is or becomes a competitor of Delta or is a vendor or manufacturer in respect of Delta and, in each case, is designated by Delta as such in a writing provided to the Administrative Agent prior to or after the Closing Date, including, in each case, reasonably identifiable Affiliates thereof; provided that in no event will any supplement to the list of Disqualified Lenders after the Closing Date apply retroactively to disqualify any Person that has previously acquired an assignment or a participation interest in respect of the Term Loan Commitments and Term Loans in accordance herewith from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders.

“Dollars” and “$” shall mean lawful money of the United States of America.

“DOT” shall mean the United States Department of Transportation and any successor thereto.

“Early Amortization Cure” shall be deemed to occur on, (a) in the case of an Early Amortization Event that arises under clause (a) of the definition thereof, earlier of (i) the date Cure Amounts related to the Early Amortization Event have been deposited to the Collection Account and (ii) the first day of the Quarterly Reporting Period following the Quarterly Reporting Period related to the Determination Date on which the Peak Debt Service Coverage Ratio has been satisfied for two consecutive Determination Dates following the Determination Date on which the Early Amortization Event was triggered, (b) in the case of an Early Amortization Event that arises under clause (b) of the definition thereof, the date on which the balance in the Reserve Account is at least equal to the Aggregate Reserve Account Required Balance, (c) in the case of an Early Amortization Event under clause (c) or clause (d) of the definition thereof, the date that no Event of Default under this Agreement or “Early Amortization Event” under the Indenture or any other Senior Secured Debt Document, as applicable, shall exist or be continuing.

“Early Amortization Event” shall mean the occurrence of any of the following events:

(a) the Peak Debt Service Coverage Ratio Test is not satisfied as set forth in the report to be delivered pursuant to Section 5.01(d);

(b) the balance in the Reserve Account is less than the Aggregate Reserve Account Required Balance on any Payment Date after giving effect to the deposits set forth in Section 2.10(b) hereof on such Payment Date;

(c) a Borrower has received written notice or has actual knowledge that an Event of Default shall have occurred; or
(d) a Borrower has received written notice or has actual knowledge that an “Early Amortization Event” shall have occurred under the Indenture or any other Senior Secured Debt Document.

“Early Amortization Payment” shall mean, with respect to any Payment Date, if an Early Amortization Period was in effect as the last day of the Related Quarterly Reporting Period, an amount equal to the lesser of:

(i) 50% of the excess of:

(A) the Term Loans’ Pro Rata Share of the sum of (1) the aggregate amount of Collections received in the Collection Account during such Quarterly Reporting Period minus (2) if such Early Amortization Period was not in effect on the first day of such Quarterly Reporting Period, the aggregate amount of Collections received in the Collection Account during such Quarterly Reporting Period prior to the first day of such Early Amortization Period plus (3) any Cure Amounts attributable to such Quarterly Reporting Period deposited in the Collection Account on or prior to the related Determination Date,

over

(B) the amount as most recently estimated by Delta to be distributed pursuant to Section 2.10(b)(i) through (viii) on the related Payment Date;

and

(ii) the amount necessary to pay the outstanding principal balance of the Term Loans (and accrued interest thereon) in full.

“Early Amortization Period” shall mean the period commencing on the occurrence of an Early Amortization Event, and ending on the earlier of (a) the date (if any) on which the Early Amortization Cure is consummated and (b) the date all Obligations (other than contingent obligations not due and owing) have been paid in full in cash.

“Early Opt-in Election” shall mean the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrowers) 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, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBO Rate, and

(b) (i) the election by the Administrative Agent and the Borrowers or (ii) the election by the Required Lenders with the written consent of the Borrowers to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent and the Borrowers of written notice of such election to the Lenders or by the Required Lenders and the Borrowers of written notice of such election to the Administrative Agent and the other Lenders.
“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” shall mean (a) a commercial bank having total assets in excess of $1.0 billion, (b) a finance company, insurance company or other financial institution or fund, in each case reasonably acceptable to the Administrative Agent, which in the ordinary course of business extends credit of the type contemplated herein or invests therein and has total assets in excess of $200.0 million and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or Section 406 of ERISA, (c) any Lender or any Affiliate of any Lender, (d) an Approved Fund of any Lender, (e) any other Person (other than a Defaulting Lender, Disqualified Lender or natural person or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of natural persons or any Affiliates of the foregoing) reasonably satisfactory to the Administrative Agent and, so long as no Event of Default under Section 7.01(b), 7.01(f), 7.01(g) or 7.01(o) has occurred and is continuing, the Borrowers and (f) solely with respect to assignments of Term Loans and solely to the extent permitted pursuant to Section 10.02(g), the Borrowers; provided that an “Eligible Assignee” shall not include any Disqualified Lender, any natural person or any Affiliate of the Borrowers.

“Eligible Deposit Account” shall mean (a) a segregated deposit account maintained with a depository institution or trust company whose short term unsecured debt obligations are rated at least, if rated by S&P, A-1 by S&P, if rated by Moody’s, P-1 by Moody’s, and, if rated by Fitch, F-1 by Fitch, (b) a segregated account which is maintained with a depository institution or trust company whose long-term unsecured debt obligations are rated at least, if rated by S&P, A by S&P, if rated by Moody’s, A2 by Moody’s and, if rated by Fitch, BBB- by Fitch or (c) a segregated trust account maintained in the corporate trust department of a federally or state chartered depository institution whose long-term unsecured debt obligations are rated at least, if rated by S&P, A by S&P, if rated by Moody’s, A2 by Moody’s and, if rated by Fitch, BBB- by Fitch, subject to regulations regarding fiduciary funds on deposit substantially similar to 12 C.F.R. §9.10(b) in effect on the date hereof.
“Environmental Laws” shall mean all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions or legally binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating to the protection of the environment, preservation or reclamation of natural resources, the handling, treatment, storage, disposal, Release or threatened Release of, or the exposure of any human (including employees) to, any Hazardous Materials.

“Environmental Liability” shall mean any liability (including any liability for damages, natural resource damage, costs of environmental investigation, remediation or monitoring or costs, fines or penalties) resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, disposal or the arrangement for disposal of any Hazardous Materials, (c) human exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement, lease or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person (whether direct or indirect), share capital in an exempted company, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“Escrow Accounts” shall mean accounts of Delta or any Subsidiary, solely to the extent any such accounts hold funds set aside by Delta or any Subsidiary to manage the collection and payment of amounts collected, withheld or incurred by Delta or such Subsidiary for the benefit of third parties relating to: (a) federal income tax withholding and backup withholding tax, employment taxes, transportation excise taxes and security related charges; (b) any and all state and local income tax withholding, employment taxes and related charges and fees and similar taxes, charges and fees, including, but not limited to, state and local payroll withholding taxes, unemployment and supplemental unemployment taxes, disability taxes, workman’s or workers’ compensation charges and related charges and fees; (c) state and local taxes imposed on overall gross receipts, sales and use taxes, fuel excise taxes and hotel occupancy taxes; (d) passenger facility fees and charges collected on behalf of and owed to various administrators, institutions, authorities, agencies and entities; (e) other similar federal, state or local taxes, charges and fees (including without limitation any amount required to be withheld or collected under applicable law); (f) other funds held in trust for, or otherwise pledged to or segregated for the benefit of, an identified beneficiary; or (g) accounts, capitalized interest accounts, debt service reserve accounts, escrow accounts and other similar accounts or funds established in connection with the ARB Indebtedness.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.
“Eurodollar Term Loan” shall mean any Term Loan bearing interest at a rate determined by reference to the LIBO Rate.

“Event of Default” shall have the meaning given such term in Section 7.01.


“Excluded Intellectual Property” shall mean all (a) Intellectual Property other than the SkyMiles Intellectual Property and (b) Delta Traveler Related Data.

“Excess Proceeds” shall have the meaning set forth in Section 2.12(b)

“Excluded Property” shall have the meaning set forth in the Security Agreement; provided that, notwithstanding anything to the contrary in any Loan Document, Excluded Property shall include any assets and any equity interests in excess of 65% of voting equity interests of any CFC or FSHCO.

“Excluded Taxes” shall mean, with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation of either any Borrower or any Guarantor hereunder or under any Loan Document, (a) any Taxes imposed on (or measured by) its net income, profits or capital, (however denominated) and franchise or similar Taxes, imposed in lieu thereof (i) by the United States of America or any political subdivision thereof or by any jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) as a result of a present or former connection between such recipient and the jurisdiction imposing such Taxes (other than a connection arising from such recipient’s having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, or enforced, this Agreement or any Loan Document, or sold or assigned an interest in this Agreement or any Loan Document), (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction described in clause (a) above, (c) in the case of a Foreign Lender, any withholding Tax or gross income Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except, and then only to the extent that, such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding Tax pursuant to Section 2.16(a), (d) in the case of a recipient, any withholding Tax that is attributable to such recipient’s failure to deliver the documentation described in Section 2.16(f), 2.16(g), or 2.16(l) and (e) any withholding Tax that is imposed by reason of FATCA.

“Extended Term Loan” shall have the meaning set forth in Section 2.28(a)(ii).

“Extension” shall have the meaning set forth in Section 2.28(a).

“Extension Amendment” shall have the meaning set forth in Section 2.28(d).
“**Extension Offer**” shall have the meaning set forth in Section 2.28(a).

“**Extension Offer Date**” shall have the meaning set forth in Section 2.28(a)(i).

“**FAA**” shall mean the Federal Aviation Administration of the United States of America and any successor thereto.

“**Facility**” shall mean each of the Term Loan Commitments and the Term Loans made thereunder.

“**Fair Market Value**” shall mean the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by an officer of Delta (unless otherwise provided in this Agreement); *provided* that any such officer of Delta shall be permitted to consider the circumstances existing at such time (including, without limitation, economic or other conditions affecting the United States airline industry generally and any relevant legal compulsion, judicial proceeding or administrative order or the possibility thereof) in determining such Fair Market Value in connection with such transaction.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement, any amended or successor provisions that are similar thereto and not materially more onerous to comply with, any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreements, treaty or convention among Governmental Authorities and implementing any of the foregoing (together with any Requirement of Law implementing such agreement involving any U.S. or non-U.S. regulations, fiscal or regulatory legislation, rules, guidance notes or practices adopted pursuant to any intergovernmental agreement or official guidance).

“**Federal Funds Effective Rate**” shall mean, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Fee Letter**” shall have the meaning set forth in Section 2.19.

“**Fees**” shall collectively mean the fees referred to in Section 2.19.

“**Finance Lease Obligation**” shall mean, as applied to any Person, an obligation that is required to be accounted for as a finance or capital lease (and not an operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a finance or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.
“Fitch” shall mean Fitch Ratings, Inc., also known as Fitch Ratings, and its successors.

“Foreign Lender” shall mean any Lender that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“FSHCO” shall mean any Subsidiary substantially all the assets of which consist of equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in one or more (a) CFCs and/or (b) other Subsidiaries substantially all the assets of which consist (directly or indirectly) of equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in one or more CFCs; provided that no SPV Party shall be considered to be a FSHCO.

“Fraudulent Transfer Laws” shall have the meaning set forth in Section 2.05(a).

“GAAP” shall mean generally accepted accounting principles in the United States of America, which are in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, statements and pronouncements of the Financial Accounting Standards Board, such other statements by such other entity as have been approved by a significant segment of the accounting profession and the rules and regulations of the SEC governing the inclusion of financial statements in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

“Governmental Authority” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank organization, or other entity exercising executive, legislative, judicial, taxing or regulatory powers or functions of or pertaining to government. Governmental Authority shall not include any Person in its capacity as an Airport Authority.

“Grantor” shall mean each Loan Party that shall at any time pledge Collateral under a Collateral Document.

“GS” shall have the meaning set forth in the first paragraph of this Agreement.

“Guarantee” of or by any Person (the “guarantor”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof; (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof; (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include (i) endorsements for collection or deposits or (ii) customary contractual indemnities in commercial agreements, in each case in the ordinary course of business and consistent with past practice. The amount of any obligation relating to a Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made (or, if less, the maximum reasonably anticipated liability for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform) as determined by the guarantor in good faith.
“Guaranteed Obligations” shall have the meaning given such term in Section 9.01(a).

“Guarantors” shall mean, collectively, HoldCo 1, Holdco 2 and Holdco 3.

“Hazardous Materials” shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes of any nature that are regulated as hazardous pursuant to, or, due to their hazardous qualities, could reasonably be expected to give rise to liability under any Environmental Law.

“HoldCo 1” shall mean SkyMiles Holdings Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo 2” shall mean SkyMiles IP Holdings Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo 3” shall mean SkyMiles IP Finance Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands.

“HoldCo IP License” shall mean that certain Intellectual Property License Agreement between Loyalty Co, as licensor, and HoldCo 3, as licensee, in the form attached as Exhibit G-1.

“Increase Effective Date” shall have the meaning set forth in Section 2.27(a).

“Increase Joinder” shall have the meaning set forth in Section 2.27(c).

“Incremental Commitments” shall have the meaning set forth in Section 2.27(a).

“Incremental Lender” shall have the meaning set forth in Section 2.27(a).
“Incremental Priority Amount” shall mean, at any time, (a) if Delta has (1) completed the merger and consolidation of a Loyalty Program of a Specified Acquisition Entity or one of its Subsidiaries or of an entity principally associated with such Specified Acquisition Entity or any of its Subsidiaries (a “Specified Loyalty Program”) into the SkyMiles Program and (2) to the extent not effected pursuant to clause (1), caused such Specified Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees), accounts in which such cash revenue is deposited, Intellectual Property and member data (but solely to the extent that such Intellectual Property and member data would be included in the definition of SkyMiles Intellectual Property, substituting references to the SkyMiles Program with references to such other Specified Loyalty Program) and material third-party contracts and intercompany agreements related to such Specified Loyalty Program to be pledged as Collateral (except to the extent constituting Excluded Property), subject to third party rights, applicable law and other Permitted Liens, an amount equal to the excess of (i) 1.4 multiplied by the aggregate amount of Transaction Revenues for the most recently completed four Quarterly Reporting Periods over (ii) $9.0 billion and otherwise (b) zero.

“Incremental Term Loans” shall have the meaning set forth in Section 2.27(a).

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money (including in connection with deposits or advances), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accrued expenses incurred and current accounts payable, in each case in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) Finance Lease Obligations, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor 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 that such Person is not liable therefore.

“Indemnified Taxes” shall mean Taxes other than Excluded Taxes imposed on or with respect to any payments made by any Borrower or any Guarantor under this Agreement or any other Loan Document.

“Indemnitee” shall have the meaning given such term in Section 10.04(b).

“Indenture” shall have the meaning set forth in the Collateral Agency and Accounts Agreement.
“Independent Director” shall mean, at any time with respect to any SPV Party, a director of such SPV Party that (1)(a) is appointed as Independent Director on the Closing Date and satisfies the Independent Director Criteria at such time or (b) is an Approved Replacement Independent Director that has been selected by the ordinary shareholder(s) of such SPV Party and (2) is a duly appointed “Independent Director” under and as defined in the constitutional documents of such SPV Party.

“Independent Director Criteria” shall mean criteria that shall be satisfied only in respect of a natural person that (a) is a director who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience; (b) either is approved by both Delta and the Administrative Agent or is provided by a company nationally recognized in the United States or the Cayman Islands for providing professional independent managers, that is not an Affiliate of any Loan Party or the Master Collateral Agent and that provides professional independent managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director; and (c) is not, and has never been, and will not while serving as Independent Director be, any of the following: (i) a member, partner, equityholder, manager, director, officer or employee of Loyalty Co or any of its equityholders, the Master Collateral Agent or any Affiliates of the foregoing (other than (A) equity ownership in Delta which (x) constitutes an immaterial amount of Delta stock and (y) is not material to the net worth of such Independent Director or (B) an Affiliate of any SPV Party or any other Affiliate of Loyalty Co that is required by a creditor to be a single purpose bankruptcy-remote entity, provided that such Person either is approved by the Administrative Agent or is employed by a company that routinely provides professional bankruptcy-independent managers or directors); (ii) a creditor, supplier or service provider (including provider of professional services) to Loyalty Co, the Master Collateral Agent or any of their respective equityholders or Affiliates (other than a nationally recognized company that routinely provides professional independent managers and other corporate services to Loyalty Co, the Master Collateral Agent or any of their respective equityholders or Affiliates in the ordinary course of business); (iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or (iv) a Person that controls (whether directly, indirectly or otherwise) any of clause (i), (ii) or (iii) above.

“Initial Amortization Date” shall mean the Payment Date in January 2023.

“Initial Lenders” shall mean each Lender having a Term Loan Commitment for an Initial Term Loan or, as the case may be, an outstanding Initial Term Loan.

“Initial Term Loan” shall have the meaning given such term in Section 2.01.

“Intellectual Property” shall mean all issued patents and patent applications, registered trademarks or service marks and applications to register any trademarks or service marks, brand names, trade dress, registered copyrights and applications for registration of copyrights, Trade Secrets, domain names, social media accounts and other intellectual property, whether registered or unregistered, including unregistered copyrights in software and source code and applications to register any of the foregoing.
“Intercompany Agreements” shall mean all currently existing or future agreements governing (a) the sale, transfer or redemption of Miles, or (b) the provision of services by Delta or any of its Subsidiaries to Loyalty Co in connection with the SkyMiles Program including: the Intercompany Agreement, dated as of the Closing Date, between Delta and Loyalty Co.

“Intercreditor Agreement” shall mean each of the Junior Lien Intercreditor Agreement and the Collateral Agency and Account Agreement.

“Interest Distribution Amount” shall mean, with respect to each Payment Date, the sum for each Class of Term Loans of the amount equal to (a) the product of (i) the applicable Interest Rate for the related Interest Period, multiplied by (ii) the Day Count Fraction, multiplied by (iii) the outstanding principal amount of Term Loans of such Class as of the first day of the related Interest Period, plus (b) any unpaid Interest Distribution Amounts in respect thereof from prior Payment Dates plus, to the extent permitted by law, interest thereon at the applicable Interest Rate for the related Interest Period.

“Interest Period” shall mean for each Payment Date, the period from and including the Payment Date immediately preceding such Payment Date (or, with respect to the initial Payment Date, the Closing Date) to but excluding such Payment Date.

“Interest Rate” shall mean the rate of interest applicable to each Term Loan as set forth in Section 2.07(a), as such rate may be modified by Section 2.08 or Section 2.09.

“Investment Grade” shall mean a rating of BBB- or better by Fitch (or its equivalent under any successor rating category of Fitch); a rating of Baa3 or better by Moody’s (or its equivalent under any successor rating category of Moody’s); and a rating of BBB- or better by S&P (or its equivalent under any successor rating category of S&P).

“Investments” shall mean, with respect to any Person, all direct or indirect investments made from and after the Closing Date by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees), capital contributions or advances (but excluding advance payments and deposits for goods and services and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities of other Persons, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The acquisition by Delta after the Closing Date of a Person that holds an Investment in a third Person will be deemed to be an Investment by Delta in such third Person. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

“IP Agreements” shall mean (a) the Contribution Agreements, (b) the IP Licenses, (c) the IP Management Agreement, and (d) each other contribution agreement, license or sublicense related to the SkyMiles Intellectual Property that is required to be entered into after the Closing Date pursuant to the terms of the Loan Documents and mutually specified as an “IP Agreement”.

“IP Licenses” shall mean (a) the HoldCo IP License and (b) the Delta IP License.

“IP Management Agreement” shall mean that certain Management Agreement among Loyalty Co, HoldCo 3, the IP Manager and the Master Collateral Agent pursuant to which the IP Manager will provide certain services to Loyalty Co and HoldCo 3 with respect to SkyMiles Intellectual Property, substantially in the form of Exhibit H hereto.

“IP Manager” shall mean Delta (or any of its affiliates to the extent a permitted successor or assign), in its capacity as IP Manager under the IP Management Agreement, or any Successor Manager (as such term is defined under the IP Management Agreement).

“IP Security Agreements” shall have the meaning set forth in the Security Agreement.
“Junior Lien Debt” shall mean, any Indebtedness owed to any other Person, so long as (i) such Indebtedness is expressly subordinated in right of payment to the Priority Lien Debt in the agreement, indenture or other instrument governing such Indebtedness and in a Junior Lien Intercreditor Agreement, (ii) the Liens on the Collateral securing such Indebtedness are subordinated to the Liens on the Collateral securing the Term Loans, and such Indebtedness of the Loan Parties shall be subordinated to the Term Loans, in each case pursuant to a Junior Lien Intercreditor Agreement, (iii) the Weighted Average Life to Maturity of such Indebtedness shall be no shorter than the remaining Weighted Average Life to Maturity of the existing Term Loans, (iv) the maturity date for such Indebtedness shall be at least 91 days after the Latest Maturity Date, and (v) the terms and conditions governing such Indebtedness of the Loan Parties shall (a) be reasonably acceptable to the Administrative Agent or (b) not be materially more restrictive, when taken as a whole, on the SPV Parties (as determined in good faith by Loyalty Co), than the terms of the then-outstanding Term Loans (except for (x) terms that are conformed (or added) in the Loan Documents for the benefit of the Lenders holding then-outstanding Term Loans pursuant to an amendment hereto or thereto subject solely to the reasonable satisfaction of Loyalty Co and the Administrative Agent, (y) covenants, events of default and guarantees applicable only to periods after the Latest Maturity Date (as of the date of the incurrence of such Junior Lien Debt) and (z) pricing, fees, rate floors, premiums, optional prepayment or redemption terms) unless the Lenders under the then-outstanding Term Loans, receive the benefit of such more restrictive terms; provided that (A) in no event shall such Indebtedness be subject to events of default, mandatory prepayment or acceleration resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the then-outstanding Term Loans and (B) any such Indebtedness shall include separateness provisions regarding each SPV Party substantially similar to the provisions of Section 5.07.

“Junior Lien Debt Documents” shall mean any documents, instruments, notes, credit agreements, purchase agreements or other agreements entered into in connection with the incurrence or issuance of any Junior Lien Debt.
“Latest Maturity Date” shall mean, at any date of determination, the latest maturity date of any Term Loan or of any other Priority Lien Debt.

“Lead Arrangers” shall have the meaning set forth in the first paragraph of this Agreement.

“Lenders” shall have the meaning set forth in the first paragraph of this Agreement.

“LIBO Rate” shall mean, with respect to each day during an Interest Period, (i) the rate per annum appearing on Reuters Pages LIBOR01 or LIBOR02 (or on any successor or substitute page(s) of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent in its reasonable discretion from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for Dollar deposits with a maturity of three (3) months or (ii) in the event that the rate identified in the foregoing clause (i) is not available at such time for any reason (any such Interest Period, an “Impacted Interest Period”), then such rate shall be the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Rate for the longest period for which the LIBO Rate is available for Dollars that is shorter than the Impacted Interest Period; and (b) the LIBO Rate for the shortest period (for which that LIBO Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time; provided that, if less than 1.0%, the LIBO Rate shall be deemed to be 1.0% for the purposes of this Agreement.

“Lien” shall mean (a) any mortgage, deed of trust, pledge, deed to secure debt, hypothecation, security interest, easement (including, without limitation, reciprocal easement agreements and utility agreements), rights-of-ways, reservations, encroachments, zoning and other land use restrictions, claim or any other title defect, lease, encumbrance, restriction, lien or charge of any kind whatsoever and (b) the interest of a vendor or a lessor under any conditional sale, capital lease or other title retention agreement (or any Finance Lease Obligations having substantially the same economic effect as any of the foregoing, but in any event not in respect of any Non-Finance Lease Obligations).

“Loan Documents” shall mean this Agreement, the Collateral Documents, the Fee Letter, any promissory notes executed in favor of a Lender and any other instrument or agreement (which is designated as a Loan Document therein) executed and delivered by any Loan Party to the Administrative Agent, the Master Collateral Agent, the Collateral Administrator or any Lender.

“Loan Parties” shall mean the Borrowers and the Guarantors.

“Loan Request” shall mean a request by the Borrowers, executed by a Responsible Officer of the Borrowers, for a Term Loan in accordance with Section 2.03 in substantially the form of Exhibit D.
“Loyalty Co” shall have the meaning set forth in the first paragraph of this Agreement.

“Loyalty Program” shall mean any customer loyalty program available to individuals (i.e., natural persons) that grants members in such program Currency based on a member’s purchasing behavior and that allows a member to accrue and redeem such Currency for a benefit or reward, including flights and/or other goods and services.

“Make-Whole Amount” means, an amount equal to the greater of (a) 104% of the principal amount of the Term Loans to be repaid and (b) the excess (to the extent positive) of:

i. the present value at such prepayment date of the principal amount of the Term Loans being repaid, of (1) the prepayment price of such Term Loans at the third anniversary of the Closing Date (excluding accrued and unpaid interest), such prepayment price (expressed in percentage of principal amount) being 104%, plus (2) all required interest payments due on such Term Loans to and including the date set forth in clause (1) (excluding accrued but unpaid interest), computed upon the prepayment date using a discount rate equal to the Treasury Rate at such prepayment date plus 50 basis points and assuming that the rate of interest on the principal amount from such prepayment date to the date set forth in clause (1) will equal the rate of interest on that principal amount in effect on the applicable prepayment date; over

ii. the principal amount of the Term Loans to be prepayment.

“Master Collateral Agent” shall mean U.S. Bank National Association in its capacity as Master Collateral Agent under the Loan Documents.

“Material Adverse Change” shall mean any event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

“Material Adverse Effect” shall mean a material adverse effect on (a) the business, operations or financial condition of Delta and its Subsidiaries, taken as a whole, (b) the validity or enforceability of the Loan Documents or the rights or remedies of the Secured Parties, (c) the ability of Loyalty Co to pay the Obligations, (d) the validity, enforceability or collectability of the Material SkyMiles Agreements, the IP Licenses or the Contribution Agreements generally or any material portion of the Material SkyMiles Agreements, the IP Licenses or the Contribution Agreements, taken as a whole, (e) the business and operations of the SkyMiles Program or (f) the ability of the Loan Parties to perform their material obligations under the IP Agreements, the Delta Intercompany Loan or the Material SkyMiles Agreements to which it is a party; provided, that no condition or event that has been disclosed in the public filings for Delta on or prior to the Closing Date shall be considered a “Material Adverse Effect” hereunder.

“Material Indebtedness” shall mean Indebtedness of any Loan Party (other than the Term Loans) outstanding under the same agreement in a principal amount exceeding $200 million.

“Material Modification” shall mean:
any amendment or waiver of, or modification or supplement to, a Material SkyMiles Agreement (other than the Intercompany Agreements) executed or effected on or after the Closing Date which: (a) extends, waives, delays or contractually or structurally subordinates one or more payments due to any Loan Party with respect to such Material SkyMiles Agreement; (b) reduces the rate or amount of payments due to any Loan Party with respect to such Material SkyMiles Agreement; (c) gives any Person other than Loan Parties party to such Material SkyMiles Agreement additional or improved termination rights with respect to such Material SkyMiles Agreement; (d) shortens the term of such Material SkyMiles Agreement or expands or improves any counterparty’s rights or remedies following a termination; or (e) imposes new financial obligations on any Loan Party under such Material SkyMiles Agreement, in each case, to the extent such amendment, waiver, modification or other supplement would reasonably be expected to result in a Payment Material Adverse Effect; and

any amendment or waiver of, or modification or supplement to, an Intercompany Agreement or the Delta Intercompany Loan which: (a) sets or shortens the scheduled maturity or term of the Intercompany Agreement to a date earlier than the Latest Maturity Date then in effect, (b) (i) sets or shortens the scheduled maturity of the Delta Intercompany Loan to a date earlier than the Latest Maturity Date then in effect, (ii) changes the obligor on the Delta Intercompany Loan, or (iii) reduces the outstanding principal amount of the Delta Intercompany Loan held by HoldCo 2 to be less than the aggregate outstanding principal amount of the Senior Secured Debt outstanding, (iv) changes the ability of Delta to repay the Delta Intercompany Loan or the payee under the Delta Intercompany Loan to demand payment in a manner that would result in the outstanding principal amount of the Delta Intercompany Loan held by HoldCo 2 to be less than the aggregate outstanding principal amount of the Senior Secured Debt outstanding, (c) amends, modifies or otherwise changes the EBITDA Margin for Miles payments payable by Delta to Loyalty Co as specified in Section 3.3 of the Intercompany Agreement (including changes to the definitions of “EBITDA Margin” and “Excluded Miles” in the Intercompany Agreement or Exhibit 1 to the Intercompany Agreement) in a manner reducing the amount payable to Loyalty Co or reduces the frequency of payments under the Intercompany Agreement to be less frequent than monthly, (d) amends, modifies or otherwise changes the calculation or rate of fees, expenses or termination payments due and owing under the Intercompany Agreement except to the extent addressed in clause (c) above, in a manner reducing the amount owed to Loyalty Co, (e) changes the contractual subordination of payments thereunder in a manner materially adverse to the Lenders, (f) changes the ability for the Master Collateral Agent to demand payment under the Delta Intercompany Loan, (g) permits payments due to Loyalty Co to be deposited to an account other than the Collection Account, (h) changes the amendment standards applicable to such agreement (other than changes affecting rights of the Administrative Agent or the Master Collateral Agent to consent to amendments, which is covered by clause (i)), (i) materially impairs the rights of the Administrative Agent or the Master Collateral Agent to enforce or consent to amendments to any provisions of any such agreement in accordance therewith, (j) changes Section 2.3 of the Intercompany Agreement such that Loyalty Co no longer has the exclusive right to issue and create Miles or (k) amends, modifies or otherwise changes Section 2.1 of the Intercompany Agreement in any manner that adversely affects Loyalty Co’s ability to perform its obligations under the SkyMiles Agreements or any other agreement related to the SkyMiles Program, and in the case of clauses (c), (d), (f) and (h) if the amendment, waiver, modification or supplement would reasonably be expected to cause a Payment Material Adverse Effect (provided that in the case of clause (c), any change to the 20% EBITDA Margin or to the inclusion of redemption cost or operating expense in EBITDA Margin will not be subject to a Payment Material Adverse Effect qualification).
Notwithstanding anything to the contrary in this definition, the entrance into a Permitted Replacement SkyMiles Agreement shall not constitute a Material Modification.

“Material SkyMiles Agreements” shall mean (a) each Intercompany Agreement, (b) the AmEx Co-Branded Agreement, (c) the AmEx Membership Rewards Agreement, (d) each Permitted Replacement SkyMiles Agreement, and (e) as of any date, each other SkyMiles Agreement that generated Transaction Revenues equal to 10% or more of Transaction Revenues from SkyMiles Agreements received over the twelve months prior to such date, in each case, as amended, restated, supplemented, or otherwise modified from time to time as permitted by the Loan Documents.

“Maximum Amortization Amount” means, as of any day of determination, an amount equal to the greatest Senior Secured Amortization Amount for any Payment Date occurring on or after such day of determination until (and including) the Latest Maturity Date at such time.

“Maximum Quarterly Debt Service” means, for any Determination Date, an amount equal to the sum of:

(a) the Maximum Amortization Amount at such time; and

(b) the Interest Distribution Amount that is or will be due on the related Payment Date;

(c) the sum of the “Interest Distribution Amounts” (as such term, or such similar or analogous term, is defined in the other applicable Senior Secured Debt Documents) that are or will be due on the related Payment Date for each Series of Senior Secured Debt (other than the Term Loans).

“Miles” shall mean the Currency under the SkyMiles Program.

“Minimum Extension Condition” shall have the meaning given such term in Section 2.28(c).

“Moody’s” shall mean Moody’s Investors Service, Inc., together with its successors.

“Net Proceeds” means (a) with respect to any Collateral Sale, Recovery Event or Contingent Payment Event, the aggregate cash proceeds and Cash Equivalents received by Delta or any of its Subsidiaries in respect thereof, net of: (i) the direct costs and expenses relating to such Collateral Sale, Recovery Event or Contingent Payment Event, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Collateral Sale, Recovery Event or Contingent Payment Event, taxes paid or payable as a result of the Collateral Sale, Recovery Event or Contingent Payment Event, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements; and (ii) any reserve for adjustment or indemnification obligations in respect of the sale price of such asset or assets established in accordance with GAAP; and (b) with respect to any issuance or incurrence of Indebtedness (including Qualifying Note Debt or Permitted Pre-paid Miles Purchases), the cash proceeds thereof, net of (i) any fees, underwriting discounts and commissions, premiums, and other costs and expenses incurred in connection with such issuance and (ii) attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses, and brokerage, consultant, accountant, and other customary fees.
“Non-Consenting Lender” shall have the meaning set forth in Section 10.08.

“Non-Control Investment” means an investment in an airline in which Delta does not possess, directly or indirectly, (a) more than 50% of the voting power of the ownership interests of such airline or the entity that operates any Loyalty Program thereof or (b) the ability to appoint a majority of the members of the Board of Directors (or equivalent governing body) of such airline or the entity that operates the loyalty program thereof.

“Non-Defaulting Lender” shall mean, at any time, a Lender that is not a Defaulting Lender.

“Non-Extending Lender” shall have the meaning set forth in Section 10.08.

“Non-Finance Lease Obligations” shall mean a lease obligation that is not required to be accounted for as a finance or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. An operating lease shall be considered a Non-Finance Lease Obligation.

“Obligations” shall mean the unpaid principal of and interest on (including interest accruing after the maturity of the Term Loans and interest accruing after the filing of any petition of bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), the Term Loans, and all other obligations and liabilities of the Borrowers to any Agent or any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which arise under this Agreement or any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, out-of-pocket costs, and expenses (including all fees, charges and disbursements of counsel to any Agent or any Lender that are required to be paid by the Borrowers pursuant hereto or under any other Loan Document) or otherwise.

“Officer” shall mean, (i) with respect to any Loan Party other than Delta, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Director, any Manager, any Managing Member or any Vice-President of such Person and (ii) with respect to Delta, the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, vice president, controller, chief accounting officer, secretary or assistant secretary of Delta, but in any event, with respect to financial matters, the chief financial officer, treasurer, assistant treasurer, controller or chief accounting officer of Delta.
“Officer’s Certificate” shall mean a certificate signed on behalf of a Borrower (or such other applicable Person) by an Officer of such Borrower (or such other applicable Person), respectively.

“On-line Tracking Data” shall mean any information or data collected in relation to on-line activities that can reasonably be associated with a particular user or computer or other device.

“Other Taxes” shall mean any and all present or future stamp, mortgage, intangible, recording, filing or documentary taxes or any other similar taxes, charges or similar levies arising from any payment made under this Agreement or any Loan Document or from the execution, performance, delivery, registration of or enforcement of this Agreement or any other Loan Document excluding, in each case, any such Tax resulting from an Assignment and Acceptance or transfer or assignment to or designation of a new applicable lending office or other office for receiving payments under any Loan Document (an “Assignment Tax”) but only if (a) such Assignment Tax is imposed as a result of a present or former connection of the assignor or assignee with the jurisdiction imposing such Assignment Tax (other than any connection arising solely 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 transaction pursuant to or enforced any Loan Documents or sold or assigned an interest in any Term Loan or Loan Documents or any transactions contemplated thereby) and (b) such Assignment Tax does not arise as a result of an assignment (or designation of a new applicable lending office) pursuant to a request by the Borrowers under Section 10.02.

“Parent Bankruptcy Event” shall mean (a) Delta (i) commences a voluntary case or procedure or (ii) consents to the entry of an order for relief against it in an involuntary case or (b) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Delta, (ii) appoints a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of Delta for all or substantially all of its property, or (iii) orders the liquidation of Delta, and in each case under clause (b) the order or decree remains unstayed and in effect for sixty (60) consecutive days.

“Parent Change of Control” shall mean the occurrence of any of the following:

(a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Delta and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act), other than any such transaction where the holders of Delta’s Voting Stock immediately before that transaction own, directly or indirectly, not less than a majority of the Voting Stock of the transferee, or the parent thereof, immediately after such transaction and in substantially the same proportion as their ownership in Delta before the transaction;
(b) the adoption of a plan relating to the liquidation or dissolution of Delta; and

(c) consummation of any transaction (including without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act, other than Delta or its subsidiaries, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the combined voting power of Delta’s Voting Stock or other Voting Stock into which Delta’s Voting Stock is reclassified, consolidated, exchanged, or changed measured by voting power rather than number of shares, other than any such transaction where:

(i) Delta’s outstanding Voting Stock is reclassified, consolidated, exchanged, or changed for other Voting Stock of Delta or for Voting Stock of the surviving corporation, and

(ii) the holders of Delta’s Voting Stock immediately before that transaction own, directly or indirectly, not less than a majority of Delta’s Voting Stock or the Voting Stock of the surviving parent corporation immediately after such transaction and in substantially the same proportion as their ownership in Delta before the transaction.

“Parent Change of Control Triggering Event” means the occurrence of both a Parent Change of Control and a Rating Decline.

“Parent Company” shall mean, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“Participant” shall have the meaning given to such term in Section 10.02(d).

“Participant Register” shall have the meaning given to such term in Section 10.02(d).

“Patriot Act” shall mean the USA Patriot Act, Title III of Pub. L. 107-56, signed into law on October 26, 2001 and any subsequent legislation that amends or supplements such Act or any subsequent legislation that supersedes such Act.

“Payment Account” shall have the meaning given such term in the Collateral Agency and Accounts Agreement.

“Payment Date” shall mean (a) the 20th calendar day of January, April, July and October of each year, or if such day is not a Business Day, the next succeeding Business Day, commencing January 20, 2021 and (b) the Termination Date.
“Payment Material Adverse Effect” shall mean a material adverse effect on (a) the ability of Loyalty Co to pay the Obligations, (b) the validity or enforceability of the Loan Documents or the rights or remedies of the Secured Parties, or (c) the validity, enforceability or collectability of the SkyMiles Agreements, the Loan Documents or the Contribution Agreements generally or any material portion of the SkyMiles Agreements, the Loan Documents or the Contribution Agreements, taken as a whole; provided that no condition or event that has been disclosed in the public filings for Delta on or prior to the Closing Date shall be considered a “Payment Material Adverse Effect” hereunder.

“Payroll Accounts” shall mean depository accounts used only for payroll.

“PBGC” shall mean the Pension Benefit Guaranty Corporation, or any successor agency or entity performing substantially the same functions.

“Peak Debt Service Coverage Ratio” shall mean, with respect to any Determination Date, the ratio obtained by dividing (i) the sum (without duplication) of (x) the aggregate amount of Collections deposited to the Collection Account during the Related Quarterly Reporting Period and (y) Cure Amounts deposited to the Collection Account on or prior to such Determination Date (and which remain on deposit in the Collection Account on such Determination Date) by (ii) the Maximum Quarterly Debt Service for such Determination Date; provided, however, that any amounts due during a Quarterly Reporting Period but deposited into the Collection Account no later than the Determination Date related to such Quarterly Reporting Period may at any Borrower’s option upon notice to the Master Collateral Agent and the Administrative Agent, be treated as if such amounts were on deposit in the Collection Account as of the end of such Quarterly Reporting Period and if so treated, such amounts shall not be considered Collections for any other Payment Date for purposes of the Peak Debt Service Coverage Ratio calculation.

“Peak Debt Service Coverage Ratio Test” shall be satisfied as of any Determination Date if the Peak Debt Service Coverage Ratio is not less than (i) for the Determination Dates in January 2021, April 2021 and July 2021, 0.75 to 1.00; (ii) for the Determination Dates in October 2021, January 2022 and April 2022, 1.00 to 1.00; (iii) for the Determination Dates in July 2022 and October 2022, 1.50 to 1.00; and (iv) for any Determination Date thereafter, 2.00 to 1.00.

“Permitted Acquisition Loyalty Program” shall mean a Loyalty Program owned, operated or controlled, directly or indirectly by a Specified Acquisition Entity or any of its Subsidiaries, or principally associated with such Specified Acquisition Entity or any of its Subsidiaries so long as: (1) the Specified Acquisition Entity’s Loyalty Program is operated so that it is not more competitive, taken as a whole, than the SkyMiles Program (as determined by Delta in good faith), (2) Delta does not take any action that would reasonably be expected to disadvantage the SkyMiles Program relative to the Specified Acquisition Entity’s Loyalty Program, (3) no members of the SkyMiles Program are targeted for membership in the Specified Acquisition Entity’s Loyalty Program; provided that this clause (3) shall not prohibit general advertisements, promotions or similar general marketing activities related to the Specified Acquisition Entity, (4) except as attributable to market or business conditions as determined in good faith by Delta, Delta will devote substantially similar resources to the SkyMiles Program, including to Delta distribution and marketing channels, as were applicable immediately prior to the consummation of the acquisition of the Specified Acquisition Entity; and (5) Delta does not announce to the public, the members of the SkyMiles Program or the members of the Specified Acquisition Entity’s Loyalty Program that the Specified Acquisition Entity’s Loyalty Program is the primary Loyalty Program for Delta.
“Permitted Business” shall mean any business that is the same as, or reasonably related, ancillary, supportive or complementary to, the business in which the SPV Parties are engaged (including the operation of the SkyMiles Program) on the date of this Agreement.

“Permitted Deposit Amounts” has the meaning set forth in the Collateral Agency and Accounts Agreement.

“Permitted Disposition” shall mean any of the following:

(a) the Disposition of Collateral permitted under the applicable Collateral Documents;

(b) the licensing or sub-licensing or granting of similar rights of Intellectual Property or other general intangibles pursuant to any SkyMiles Agreement or as otherwise permitted by (or pursuant to) the IP Agreements;

(c) the abandonment or cancellation of Intellectual Property in the ordinary course of business;

(d) any transfer, deletion, de-identification or purge of any Personal Data that is required or permitted under applicable privacy laws, under any of the Loan Parties’ public-facing privacy policies or in the ordinary course of business (including in connection with terminating inactive SkyMiles Program member accounts) pursuant to the applicable Loan Party’s privacy and data retention policies consistent with past practice;

(e) the Disposition of cash or Cash Equivalents constituting Collateral in exchange for other cash or Cash Equivalents constituting Collateral and having reasonably equivalent value therefor;

(f) to the extent constituting a Disposition, (i) the incurrence of Liens that are permitted to be incurred pursuant to Section 6.06 or (ii) the making of (x) any Restricted Payment that is permitted to be made, and is made, pursuant to Section 6.01 or (y) any Permitted Investment;

(g) Dispositions in connection with any Intercompany Agreement or IP Agreement;

(h) condemnation, expropriation or any similar action on assets or other dispositions required by a Governmental Authority or casualty or insured damage to assets;

(i) surrender or waive contractual rights and settle, release, surrender or waive contractual or litigation claims (or other Disposition of assets in connection therewith);
the expiration of the following registered Intellectual Property: (A) any copyright, the term of which has expired under applicable law; (B) any patent, the term of which has expired under applicable law, taking into account all patent term adjustments and extensions, and provided that all maintenance fees are paid; and (C) any trademark or service mark, the term of which has expired under applicable law because a declaration or statement of use to maintain the registration cannot be submitted to, or has been finally rejected by, the relevant governmental authority because such trademark or service mark is no longer in use; in each case, subject to the terms and conditions of the IP Management Agreement;

(k) [Reserved]; and

(l) the sale of Miles in the ordinary course of business under the terms of the SkyMiles Agreements.

“Permitted Investments” shall mean:

1. to the extent constituting an Investment, Investments in any SPV Party arising from the transactions contemplated in any Loan Document;

2. any Investment in cash, Cash Equivalents and any foreign equivalents;
3. any Investments received in a good faith compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or (ii) litigation, arbitration or other disputes;

4. prepayment of any Term Loans in accordance with the terms and conditions of this Agreement;

5. any guarantee of Indebtedness of the SPV Parties to the extent otherwise permitted under this Agreement;

6. accounts receivable arising in the ordinary course of business; and

7. Investments in connection with outsourcing initiatives in the ordinary course of business.

“Permitted Liens” shall mean:

(1) Liens securing the Priority Lien Debt, including pursuant to the Loan Documents, so long as such Indebtedness and such Liens are subject to the Collateral Agency and Accounts Agreement;

(2) Liens securing Junior Lien Debt; provided that such Liens secured by the Collateral shall (i) rank junior to the Liens secured by the Collateral securing the Obligations and (ii) be subject to a Junior Lien Intercreditor Agreement;

(3) Liens of a collection bank arising under Section 4-208 of the New York Uniform Commercial Code or any comparable or successor provision on items in the course of collection;

(4) (i) any overdrafts and related liabilities arising from treasury, netting, depository and cash management services or in connection with any automated clearing house transfers of funds, in each case as it relates to cash or Cash Equivalents, if any, (ii) Liens in favor of depository banks or a securities intermediary arising as a matter of law or that are contractual rights of setoff encumbering deposits and that are within the general parameters customary in the banking or finance industry and (iii) other than with respect to the SPV Parties, attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business;

(5) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(6) Liens imposed by law, such as carriers’, warehousemen’s, landlord’s and mechanics’ Liens, in each case, incurred in the ordinary course of business;

(7) Liens arising by operation of law in connection with judgments, attachments or awards which do not constitute an Event of Default hereunder;

(8) to the extent constituting Liens, the rights granted by any Loan Party to another Loan Party or the Master Collateral Agent pursuant to any Intercompany Agreement or IP Agreement (other than any rights granted thereunder following any amendment or modification thereof that is not permitted by the terms of such agreement or this Agreement);

(9) (i) leases and subleases by any Grantor as they relate to any Collateral and to the extent such leases or subleases (A) do not interfere in any material respect with the business of such Grantor and (B) do not relate to Intellectual Property or SkyMiles Agreements or (ii) to the extent constituting Liens, licenses, sub-licenses and similar rights as they relate to any SkyMiles Intellectual Property (A) granted to any third-party counterparty of any SkyMiles Agreements pursuant to the terms of such agreement or (B) as otherwise expressly permitted by the IP Licenses and the Collateral Documents to be granted to any Person (other than any sub-license or similar right granted thereunder following any amendment or modification thereof that is not permitted by the terms of such agreement or this Agreement);

(10) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy or discharge Priority Lien Debt or Junior Lien Debt in connection with a permitted repayment thereof and in favor of the Master Collateral Agent (in the case of Priority Lien Debt) or the collateral agent, administrative agent or trustee in respect of such Junior Lien Debt; provided that (a) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied or discharged, (b) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged, and (c) the satisfaction or discharge of such Indebtedness is expressly permitted hereunder;
(11) Liens consisting of an agreement to dispose of any property pursuant to a Disposition permitted hereunder;

(12) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant, or permit held by any Grantor or by a statutory provision, to terminate any such lease, license, franchise, grant, or permit, or to require annual or periodic payments as a condition to the continuance thereof, in each case so long as such rights (A) do not interfere in any material respect with the business of such Grantor and (B) do not relate to Intellectual Property or SkyMiles Agreements except as provided in the Collateral Documents;

(13) (i) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal, or similar bonds or with respect to other regulatory requirements in connection therewith or (ii) letters of credit or bankers’ acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business;

(14) Liens in favor of banking or other financial institutions or other electronic payment service providers arising as a matter of law or customary contract encumbering deposits, including deposits in “pooled deposit” or “sweep” accounts (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(15) Liens existing on the Closing Date set forth on Schedule 1.01(b); and

(16) any extension, modification, renewal, refinancing or replacement of the Liens described in clauses (1) through (15) above, provided that such extension, modification, renewal or replacement does not increase the amount of Indebtedness associated therewith.

“Permitted Pre-paid Miles Purchases” shall mean Pre-paid Miles Purchases permitted by Section 6.02(b).

“Permitted Replacement SkyMiles Agreement” shall mean any SkyMiles Agreement entered into by any Loan Party to replace any Material SkyMiles Agreement (other than an Intercompany Agreement) that has been (or will be) terminated, cancelled or expired; provided that:

(a) the Rating Agency Condition has been met;
(b) the counterparty to such Permitted Replacement SkyMiles Agreement shall have a corporate rating from at least two of S&P, Moody’s and Fitch of not lower than BBB, Baa2 and BBB, respectively;
(c) the projected cash revenues (as determined in good faith by the Loan Parties) under such Permitted Replacement SkyMiles Agreement for (i) the immediately succeeding 24 months shall equal no less than 75% of the actual cash revenues of the Material SkyMiles Agreement that it is replacing and (ii) the 12 months following such 24 months shall equal no less than 85% of the actual cash revenues of the Material SkyMiles Agreement that it is replacing, in each case determined on an annualized basis using the 12 months preceding the termination of such Material SkyMiles Agreement;
(d) such Permitted Replacement SkyMiles Agreement shall expressly permit the applicable Loan Party to pledge its rights thereunder to the Master Collateral Agent;

(e) such Permitted Replacement SkyMiles Agreement shall have confidentiality obligations that are not materially more restrictive (taken as a whole) than the confidentiality obligations in the Material SkyMiles Agreements in existence on the date hereof (as determined in good faith by the Loan Parties);

(f) such Permitted Replacement SkyMiles Agreement shall not have a scheduled termination date prior to the Latest Maturity Date; and

(g) no Early Amortization Event or Event of Default would result therefrom.

It being acknowledged and agreed that so long as the conditions in clauses (a) through (g) of this definition are satisfied, an amendment and restatement, amendment and/or extension of a then existing Material SkyMiles Agreement with an existing counterparty shall constitute a Permitted Replacement SkyMiles Agreement.

“Person” shall mean any natural person, corporation, division of a corporation, partnership, limited liability company, exempted company, trust, joint venture, association, company, estate, unincorporated organization, Airport Authority or Governmental Authority or any agency or political subdivision thereof.

“Petition Date” shall have the meaning given to such term in the definition of “Delta Case Milestones”.

“Personal Data” shall mean (i) any information or data that alone or together with any other data or information can be used to identify, directly or indirectly, a natural person or otherwise relates to an identified or identifiable natural person and (ii) any other information or data considered to be personally identifiable information or data under applicable law.

“Plan” shall mean a single employer plan, as defined in Section 4001(a)(15) of ERISA, that is a pension plan subject to the provisions of Title IV of ERISA, Sections 412 or 430 of the Code or Section 302 of ERISA.

“Portfolio Interest Exemption” shall have the meaning set forth in Section 2.16(g)(iv).

“Pre-paid Miles Purchases” shall mean the sale by the Loan Parties of pre-paid Miles to a counterparty of a SkyMiles Agreement or any similar transaction involving a counterparty of a SkyMiles Agreement advancing funds to Delta or any of its Subsidiaries against future payments to Delta or any of its Subsidiaries by such counterparty under such SkyMiles Agreement.
“**Premium**” shall mean any amounts under clauses (a), (b), (c) or (d) of Section 2.21.

“**Prime Rate**” shall mean the rate of interest last quoted by The Wall Street Journal as the “**Prime Rate**” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“**Priority Lien Cap**” shall mean, at any time, an amount equal to the sum of (a) $9.0 billion plus (b) the Incremental Priority Amount at such time (if any).

“**Priority Lien Debt**” shall mean (i) the Term Loans; (ii) the notes issued under the Indenture; and (iii) any incremental Term Loans or other Indebtedness incurred or any additional notes issued under the Indenture, in each case, incurred or issued after the Closing Date, pursuant to and in accordance with Section 6.02(c).

“**Priority Lien Debt Documents**” shall mean any documents, instruments, notes, credit agreements, purchase agreements or other agreements entered into in connection with the incurrence or issuance of any Priority Lien Debt.

“**Pro Rata Share**” means, on any date, a proportion equal to (a) the aggregate principal amount of Term Loans outstanding on such date divided by (b) the aggregate principal amount of Priority Lien Debt outstanding on such date.

“**PTE**” shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“**QFC Credit Support**” shall have the meaning set forth in Section 10.21.

“**Qualified Professional Asset Manager**” shall have the meaning set forth in Section 10.20(a)(iii)(A).

“**Qualified Replacement Assets**” shall mean assets used or useful in the business of the Loan Parties that shall be pledged as Collateral on a first lien basis.
“**Qualifying Note Debt**” shall mean Indebtedness issued in a Capital Markets Offering by the Borrowers on or around the Closing Date or in connection with the primary syndication of the Term Loans.

“**Quarterly Reporting Period**” means (a) initially, the period commencing on the Closing Date and ending on December 31, 2020 and (b) thereafter, each successive period of three consecutive months.

“**Rating Agency**” shall mean (1) each of Fitch, Moody’s, and S&P, and (2) if any of Fitch, Moody’s, or S&P ceases to rate the Term Loans or fails to make a rating of the Term Loans publicly available for reasons outside of Delta’s control, a “nationally recognized statistical rating organization” as defined in Section 3 (a)(62) of the Exchange Act, selected by Delta (as certified by a resolution of Delta’s Board of Directors) as a replacement agency for Fitch, Moody’s, or S&P, or all of them, as the case may be.

“**Rating Agency Condition**” shall mean, with respect to any then-existing Term Loans and any action, the Borrowers have provided evidence to the Administrative Agent and the Collateral Agent that each Rating Agency that has provided a rating for the Facility pursuant to Section 5.15 has provided a written confirmation that such action will not result in either (A) a withdrawal of its credit ratings on the then-existing Term Loans or (B) the assignment of credit ratings on the then-existing Term Loans below the lower of (x) the then-current credit ratings on such Term Loans and (y) the initial credit ratings assigned to such Term Loans (in each case, without negative implications); provided that any time that there are no Term Loans rated by a Rating Agency, references to any condition or requirement that the “Rating Agency Condition” shall have been satisfied shall have no effect and no such action shall be required.

“**Rating Decline**” shall mean with respect to the Term Loans, if, within 60 days after public notice of the occurrence of a Parent Change of Control (which period shall be extended so long as the rating of the Term Loans is under publicly announced consideration for possible downgrade by any Rating Agency providing a rating for the Facility pursuant to Section 5.15), the rating of the Term Loans by each Rating Agency that has at such time provided a rating for the Term Loans pursuant to Section 5.15 shall be decreased by one or more gradations and in each case below Investment Grade; provided that a Rating Decline shall not be deemed to have occurred if such Rating Agencies have not expressly indicated that such downgrade is a result of such Parent Change of Control.

“**Recovery Event**” shall mean any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any Collateral.

“**Refinanced Term Loans**” shall have the meaning set forth in Section 10.08(a).

“**Register**” shall have the meaning set forth in Section 10.02(b)(iv).

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, employees, agents and advisors of such Person and such Person’s Affiliates.
“Related Quarterly Reporting Period” shall mean the most recently completed Quarterly Reporting Period.

“Release” shall have the meaning specified in Section 101(22) of the Comprehensive Environmental Response Compensation and Liability Act.

“Relevant Governmental Body” shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“Replacement Term Loans” shall have the meaning set forth in Section 10.08(a).

“Required Class Lenders” shall mean, at any time, Lenders holding more than 50% of the Term Loans (or Term Loan Commitments) of any Class.

“Required Lenders” shall mean, at any time, Lenders holding more than 50% of (a) until the funding of the Initial Term Loans, the Term Loan Commitments then in effect and (b) thereafter, the aggregate principal amount of all Term Loans outstanding. The outstanding Term Loans and Term Loan Commitments of any Defaulting Lender shall be disregarded in determining the “Required Lenders” at any time.

“Required Number of Independent Directors” means, with respect to Loyalty Co, two (2) Independent Directors, and, with respect to all other SPV Parties, one (1) Independent Director.

“Requirement of Law” shall mean, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, or requirements of, any Governmental Authority, in each case having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Reserve Account” shall have the meaning given such term in the Collateral Agency and Accounts Agreement.

“Resignation Effective Date” shall have the meaning given to such term in Section 8.05.

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

“Responsible Officer” shall mean an Officer.

“Restricted Investment” shall mean an Investment other than a Permitted Investment.
“**Restricted Payments**” shall have the meaning set forth in Section 6.01(a).

“**Retained Agreements**” shall mean, at any time, all currently existing co-branding, partnering or similar agreements related to or entered into in connection with the SkyMiles Program and with respect to which the rights therein have not been transferred to Loyalty Co to the extent permitted under Section 5.16(i), but excluding the Delta Air Line Business Agreements.

“**S&P**” shall mean Standard & Poor’s Ratings Services, together with its successors.

“**Sale of a Grantor**” shall mean, with respect to any Collateral, an issuance, sale, lease, conveyance, transfer or other disposition of the Equity Interests of the applicable Grantor that owns such Collateral.

“**Sanctioned Country**” shall mean, at any time, a country, territory or region which is itself the subject or target of any Sanctions, which as of the Closing Date include Crimea, Cuba, Iran, North Korea and Syria.

“**Sanctioned Person**” shall mean, at any time, (a) a Person which is subject or target of any Sanctions or (b) any Person owned or controlled by any such Person or Persons.

“**Sanctions**” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the United States government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“**Scheduled Principal Amortization Amount**” shall mean, with respect to each Payment Date, the sum of (a) an amount equal to (i) $0 in the case of the Payment Date occurring in January 2021 and the next seven (7) Payment Dates occurring thereafter and (ii) $150.0 million, in the case of the Initial Amortization Date and each Payment Date occurring thereafter, as each such amount may be adjusted with respect to any prepayments applied to reduce Scheduled Principal Amortization Amounts in accordance with Section 2.12 or Section 2.13 prior to such Payment Date and as may be adjusted in connection with the incurrence of any Incremental Term Loans, Extended Term Loans or Replacement Term Loans plus (b) any unpaid Scheduled Principal Amortization Amounts from prior Payment Dates.

“**SEC**” shall mean the United States Securities and Exchange Commission.

“**Secured Parties**” shall mean the Agents and the Lenders.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Security Agreement**” shall mean that certain Security Agreement, dated as of the Closing Date, among Loyalty Co, Hold Co 3 and the Master Collateral Agent.

“**Senior Secured Amortization Amount**” means, with respect to any Payment Date, the sum of:
(a) the Scheduled Principal Amortization Amount that will be due on such Payment Date for the Term Loans; and

(b) the sum of the “Scheduled Principal Amortization Amounts” (as such term, or such similar or analogous term, is defined in the other applicable Senior Secured Debt Documents) that will be due on such Payment Date for each Series of Senior Secured Debt (other than the Term Loans) (but excluding, for the avoidance of doubt, any balloon or bullet payments of the principal amount thereof at final maturity thereof).

“Shortfall Period” shall have the meaning set forth in Section 2.24.

“SkyMiles Agreements” shall mean all currently existing, future and successor co-branding, partnering or similar agreements related to or entered into in connection with the SkyMiles Program including each Material SkyMiles Agreement, but excluding (i) agreements used to operate the Delta airline business that, even if used in connection with the SkyMiles Program, would be used to operate the Delta airline business in the absence of a Loyalty Program (it being agreed that the agreements set forth in clause (i) shall not include any credit card co-branding, partnering or similar agreements) (”Delta Air Line Business Agreements”) and (ii) any Retained Agreements.

“SkyMiles Customer Data” shall mean all data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or Loyalty Co and used, generated or produced as part of the SkyMiles Program, including all of the following: (a) a list of all members of the SkyMiles Program; and (b) the SkyMiles Member Profile Data for each member of the SkyMiles Program, but excluding Delta Traveler Related Data.

“SkyMiles Customer Database” shall have the meaning given to such term in Section 4.03(b).

“SkyMiles Intellectual Property” shall mean (a) SkyMiles Customer Data, (b) the proprietary source code set forth on Schedule 1.01(c), (c) the registered trademarks and trademark applications set forth on Schedule 1.01(c), (d) the issued patents and patent applications set forth on Schedule 1.01(c), (e) the registered copyrights set forth on Schedule 1.01(c), and (f) other data, proprietary source code, registered trademarks, issued patents, registered copyrights and applications for the foregoing, in each case, that are owned or purported to be owned by Delta or its Subsidiaries and are used in the SkyMiles Program and which are required to be contributed to Loyalty Co from time to time as set forth in Section 5.06 of this Agreement. For the avoidance of doubt, the SkyMiles Intellectual Property shall exclude all Delta Intellectual Property.

“SkyMiles Member Profile Data” shall mean, with respect to each member of the SkyMiles Program, such member’s (a) name, mailing address, email address, and phone numbers, (b) communication and promotion opt-ins, (c) total miles balance, (d) third party engagement history, (e) accrual and redemption activity, (f) SkyMiles Program account number, and (g) annual member status (e.g., Medallion, Gold Medallion, etc.); provided, that clauses (b) through (e) shall exclude Delta Traveler Related Data.
“SkyMiles Program” shall mean any Loyalty Program which is operated, owned or controlled, directly or indirectly by Loyalty Co, Delta or any of its subsidiaries, or principally associated with Loyalty Co, Delta or any of its subsidiaries, as in effect from time to time, whether under the “SkyMiles” name or otherwise, in each case including any successor program but excluding any Permitted Acquisition Loyalty Program and any Specified Minority Owned Program.

“SkyMiles Revenues” shall mean, with respect to any period, the aggregate amount of cash revenues attributable to the SkyMiles Program during such period (including any cash revenue attributable to the Retained Agreements and the Intercompany Agreements).

“SOFR” shall mean, with respect to any day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“SOFR-Based Rate” shall mean SOFR, Compounded SOFR or Term SOFR.

“Solvent” shall mean, for any Person, that (a) the fair market value of its assets (on a going concern basis) exceeds its liabilities, (b) it has and will have sufficient cash flow to pay its debts as they mature in the ordinary course of business and (c) it does not and will not have unreasonably small capital to engage in the business in which it is engaged and proposes to engage.

“Specified Acquisition Entity” shall means any entity that is (x) acquired by Delta or any of its Subsidiaries (other than any SPV Party) after the Closing Date (whether such entity becomes wholly or less than 100% owned by Delta or any of its Subsidiaries (other than any SPV Party)) or (y) another commercial airline (including any business lines or divisions thereof) with which Delta or such a Subsidiary of Delta merges or enters into an acquisition transaction.


“Specified Loyalty Program” shall have the meaning given to such term in the definition of “Incremental Priority Amount.”

“Specified Minority Owned Program” means the primary Loyalty Program operated by Latam, AeroMexico, Virgin Atlantic, Air France-KLM, Korean, China Eastern and any other airline (or entity that operates the loyalty program thereof) in which Delta has a Non-Control Investment, in each case only so long as such entity remains a Non-Control Investment of Delta.

“Specified Organization Documents” shall mean (i) the Amended and Restated Memorandum of Association of Loyalty Co, dated the date hereof, (ii) the Amended and Restated Memorandum of Association of HoldCo 3, dated the date hereof, (iii) the Amended and Restated Memorandum of Association of HoldCo 2, dated the date hereof and (iv) the Amended and Restated Memorandum of Association of HoldCo 1, dated the date hereof.
“SPV Parties” shall mean Loyalty Co, HoldCo 1, HoldCo 2 and HoldCo 3.

“SPV Party Change of Control” shall mean the occurrence of any of the following:

1. The failure of Delta to directly own 100% of the Equity Interests in HoldCo 1 (excluding any special share(s) issued to Walkers Fiduciary Limited);
2. The failure of HoldCo 1 to directly own 100% of the Equity Interests in HoldCo 2 (excluding any special share(s) issued to Walkers Fiduciary Limited);
3. The failure of HoldCo 2 to directly own 100% of the Equity Interests in HoldCo 3 (excluding any special share(s) issued to Walkers Fiduciary Limited); or
4. The failure of HoldCo 3 to directly own 100% of the Equity Interests in Loyalty Co (excluding any special share(s) issued to Walkers Fiduciary Limited).

“SPV Provisions” shall mean the definitions and articles specified in the definition of “Prohibited Resolutions” in the Specified Organization Documents of each SPV Party.

“Stated Maturity” shall mean, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the Closing Date, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“Statutory Reserve Rate” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Term Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in reserve percentage.

“Subsidiary” shall mean, with respect to any Person (in this definition referred to as the “parent”), any corporation, association or other business entity (whether now existing or hereafter organized) of which at least a majority of the securities or other ownership or membership interests having ordinary voting power for the election of directors (or equivalent governing body) is, at the time as of which any determination is being made, owned or controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.
“Subsidiary Guarantor” shall mean, with respect to any Person, any Subsidiary of such Person that is a Guarantor.

“Supported OFC” shall have the meaning set forth in Section 10.21.

“Successor Company” shall have the meaning set forth in Section 6.10(a).

“Swap Contract” shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, assessments, fees, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Lender” shall mean each Lender having a Term Loan Commitment or, as the case may be, an outstanding Term Loan.

“Term Loan Commitment” shall mean the commitment of each Term Lender to make a Class of Term Loans hereunder and, in the case of the Initial Term Loans in an aggregate principal amount equal to the amount set forth under the heading “Initial Term Loan Commitment” opposite its name in Annex A hereto or in the Assignment and Acceptance pursuant to which such Lender became a party hereto. The aggregate amount of the Initial Term Loan Commitments is $3.0 billion.

“Term Loan Maturity Date” shall mean, (a) with respect to the Initial Term Loans that have not been extended pursuant to Section 2.28, October 20, 2027 and (b) with respect to the Extended Term Loans, the final maturity date therefor as specified in the Extension Offer accepted by the respective Term Loans (as the same may be further extended pursuant to Section 2.28).
“Term Loans” shall mean the Initial Term Loans, any Incremental Term Loans, any Extended Term Loans, any Refinanced Term Loans and any Replacement Term Loans, as applicable.

“Term SOFR” shall mean the forward looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Termination Date” shall mean the earlier to occur of (a) the Term Loan Maturity Date and (b) the date of acceleration of the Term Loans in accordance with the terms hereof.

“Third Party Processor” shall mean a third party provider or other third party that accesses, collects, stores, transmits, transfers, processes, discloses or uses Personal Data on behalf of a Borrower.

“Threshold Amount” shall have the meaning set forth in Section 2.12(b).

“Title 14” shall mean Title 14 of the U.S. Code of Federal Regulations, including Part 93, Subparts K and S thereof, as amended from time to time or any successor or recodified regulation.

“Title 49” shall mean Title 49 of the United States Code, which, among other things, recodified and replaced the U.S. Federal Aviation Act of 1958, and the rules and regulations promulgated pursuant thereto, and any subsequent legislation that amends, supplements or supersedes such provisions.

“Trade Secrets” shall mean confidential and proprietary information, including trade secrets (as defined under the Uniform Trade Secrets Act or the federal Defend Trade Secrets Act of 2016) and proprietary know-how, which may include all inventions (whether or not patentable), invention disclosures, methods, processes, designs, algorithms, source code, customer lists and data (including SkyMiles Customer Data), databases, compilations, collections of data, practices, processes, specifications, test procedures, flow diagrams, research and development, and formulas.

“Transaction Documents” shall mean the Loan Documents, the IP Agreements the Intercompany Agreements, the Delta Intercompany Note, the Deeds of Undertaking and the Specified Organization Documents.

“Transaction Revenue” shall mean, without duplication, (a) all cash revenues paid to any Loan Party under the SkyMiles Agreements other than the Intercompany Agreements, (b) all cash revenues paid to Loyalty Co under the Intercompany Agreements and the IP Licenses and (c) all other cash revenues of Loyalty Co (which shall include all cash revenues of the SkyMiles Program). For the avoidance of doubt, Transaction Revenues shall not include (i) payments made by any SPV Party to any other SPV Party, (ii) any Permitted Deposit Amounts and (iii) any taxes paid to Loyalty Co that Loyalty Co collects for, or on behalf of, any Governmental Authority.
“Transactions” shall mean the execution, delivery and performance by the Loan Parties of this Agreement and the other Transaction Documents to which they may be a party, the creation of the Liens in the Collateral in favor of the Master Collateral Agent and the Collateral Administrator, in each case for the benefit of the Secured Parties, the borrowing of Term Loans and the use of the proceeds thereof.

“Treasury Rate” shall mean with respect to any prepayment date, the yield to maturity as of such prepayment date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to the prepayment date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the prepayment date to the third anniversary of the Closing Date (or if such period is shorter than the shortest period which such yield is so published or otherwise so publicly available, such shortest period).

“U.S. Special Resolution Regimes” shall have the meaning set forth in Section 10.21.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

“UK Financial Institution” shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“United States Citizen” shall have the meaning set forth in Section 3.02.

“Unrestricted Cash” means cash and Cash Equivalents of Delta that (i) may be classified, in accordance with GAAP, as “unrestricted” on the consolidated balance sheets of Delta or (ii) may be classified, in accordance with GAAP, as “restricted” on the consolidated balance sheets of Delta solely in favor of the Senior Secured Parties.

“Voting Stock” of any specified person as of any date shall mean the capital stock of such person that is at the time entitled to vote generally in the election or appointment of the board of directors of such person.
“**Weighted Average Life to Maturity**” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing:

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

2. the then outstanding principal amount of such Indebtedness.

“**Withholding Agent**” shall mean each Loan Party and the Administrative Agent.

“**Write-Down and Conversion Powers**” shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 **Terms Generally**. 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, extended, amended and restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference herein to any Person shall be construed to include such Person’s permitted 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 Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless expressly provided otherwise, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) “knowledge” or “aware” or words of similar import shall mean, when used in reference to the Borrowers or the Guarantors, the actual knowledge of any Responsible Officer, (g) the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including” and (h) all references to “in the ordinary course of business” of the Borrowers or any Subsidiary thereof means (i) in the ordinary course of business of, or in furtherance of an objective that is in the ordinary course of business of the Borrowers or such Subsidiary, as applicable, (ii) customary and usual in the industry or industries of the Borrowers and their respective Subsidiaries in the United States or any other jurisdiction in which the Borrowers or any Subsidiary does business, as applicable, or (iii) generally consistent with the past or current practice of the Borrowers or such Subsidiary, as applicable, or any similarly situated businesses in the United States or any other jurisdiction in which the Borrowers or any Subsidiary does business, as applicable. In the case of any cure or waiver under the Loan Documents, the Borrowers, the applicable Loan Parties, the Lenders and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default cured or waived pursuant to the Loan Documents shall be deemed to be cured and not continuing, it being understood that no such cure or waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.
Section 1.03  **Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if Delta notifies the Administrative Agent that Delta requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies Delta that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Upon any such request for an amendment, Delta, the Required Lenders and the Administrative Agent agree to consider in good faith any such amendment in order to amend the provisions of this Agreement so as to reflect equitably such accounting changes so that the criteria for evaluating Delta’s consolidated financial condition shall be the same after such accounting changes as if such accounting changes had not occurred.

Section 1.04  **Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.05  **Rounding.** Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number.
Section 1.06 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to organizational or constitutional documents, agreements (including the Loan Documents), and other contractual requirements shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements, modifications, restructurings, replacements, refinancings, renewals, or increases (in each case, where applicable, whether pursuant to one or more agreements or with different lenders or agents and whether provided under the original credit agreement or one or more other credit agreements, indentures, financing agreements or otherwise, including any agreement extending the maturity thereof, otherwise restructuring all or any portion of the Indebtedness thereunder, increasing the amount loaned or issued thereunder, altering the maturity thereof or providing for other Indebtedness), but only to the extent that such amendments, restatements, amendment, and restatements, extensions, supplements, modifications, replacements, restructurings, refinancings, renewals, or increases are not prohibited by any Loan Document; (b) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting such Requirement of Law; and (c) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

Section 1.07 Exchange Rate.

(a) Any amount specified in this Agreement (other than in Section 2) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount to be determined at the rate of exchange quoted by the Reuters World Currency Page for the applicable currency at 11:00 a.m. (London time) on such day (or, in the event such rate does not appear on any Reuters World Currency Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and Loyalty Co, or, in the absence of such agreement, by reference to such publicly available service for displaying exchange rates as the Administrative Agent selects in its reasonable discretion).

(b) [Reserved].

(c) Notwithstanding the foregoing, for purposes of determining compliance with Section 6 or the definitions of “Permitted Dispositions,” “Permitted Investments” and “Permitted Liens” (and, in each case, other definitions used therein) with respect to the amount of any Indebtedness, Lien, disposition, Investment, Restricted Payment or other applicable transaction in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Lien is incurred or such disposition, Investment, Restricted Payment or other applicable transaction is made (so long as such Indebtedness, Lien, disposition, Investment, Restricted Payment or other applicable transaction at the time incurred or made was permitted hereunder). No Default or Event of Default shall arise as a result of any limitation or threshold set forth in Dollars in Section 7 being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the last day of the fiscal quarter immediately preceding the fiscal quarter in which such determination occurs or in respect of which such determination is being made.
Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with Loyalty Co’s prior written consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

Section 1.08 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.09 Timing of Payment or Performance. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.10 Certifications. All certifications to be made hereunder by a Responsible Officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as a Responsible Officer or a representative of such Loan Party, on such Loan Party’s behalf and not in such Person’s individual capacity.

SECTION 2.

AMOUNT AND TERMS OF CREDIT

Section 2.01 Commitments of the Lenders; Term Loans.

(a) Initial Term Loan Commitments. Each Initial Lender severally, and not jointly with the other Initial Lenders, agrees, upon the terms and subject to the conditions herein set forth, to make a term loan denominated in Dollars (each an “Initial Term Loan” and collectively the “Initial Term Loans”) to the Borrowers on the Closing Date, in an aggregate principal amount not to exceed Term Loan Commitment for Initial Term Loans of such Initial Lender, which Initial Term Loans, collectively, shall constitute Term Loans for all purposes of the Agreement and shall be repaid in accordance with the provisions of this Agreement. Any amount borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be reborrowed. Each Initial Lender’s Term Loan Commitment for Initial Term Loans shall terminate immediately and without further action on the Closing Date after giving effect to the funding by such Initial Lender of each Initial Term Loan to be made by it on such date.

(b) Type of Borrowing. Each Lender at its option may make any Term Loan by causing any domestic or foreign branch, or Affiliate of, such Lender to make such Term Loan; provided that any exercise of such option shall not affect the joint and several obligation of the Borrowers to repay such Term Loan in accordance with the terms of this Agreement.
Section 2.02  [Reserved].

Section 2.03  Requests for Loans. Unless otherwise agreed to by the Administrative Agent, to request the Initial Term Loans on the Closing Date, the Borrowers shall notify the Administrative Agent of such request by telephone not later than 2:00 p.m., one (1) Business Day before the Closing Date. Such telephonic Loan request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Loan Request signed by the Borrowers. Such telephonic and written request shall specify the aggregate amount of such Initial Term Loans.

Section 2.04  Funding of Term Loans. Each Initial Lender shall make each Initial Term Loan to be made by it hereunder on the Closing Date by wire transfer of immediately available funds by 12:00 p.m., or such earlier time as may be reasonably practicable, to the account of the Administrative Agent most recently designated by the Administrative Agent for such purpose by notice to the Lenders. Upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent will make the proceeds of the Initial Term Loans available to Loyalty Co, on behalf of the Borrowers, by promptly crediting such proceeds so received, in like funds, to the Collection Account.

Section 2.05  Co-Borrowers.

(a) Joint and Several Liability. All Obligations of the Borrowers under this Agreement and the other Loan Documents shall be joint and several Obligations of the Borrowers, each as principal. Anything contained in this Agreement and the other Loan Documents to the contrary notwithstanding, the Obligations of each Borrower hereunder, solely to the extent that such Borrower did not receive proceeds of Term Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the Obligations of such Borrower (collectively, the “Fraudulent Transfer Laws”), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of intercompany Indebtedness to any other Loan Party or Affiliates of any other Loan Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Loan Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Borrower pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Borrower and other Affiliates of any other Loan Party of Obligations arising under guarantees by such parties.

(b) Subrogation. Until the Obligations shall have been paid in full in cash, each Borrower shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy which it now has or may hereafter have against the other Borrowers or any other guarantor of the Obligations. Each Borrower further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Borrower may have against the other Borrower, any collateral or security or any such other Loan Party, shall be junior and subordinate to any rights the Agents or the Lenders may have against the other Borrower, any such collateral or security, and any such other Loan Party.

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Obligations Absolute. Each Borrower hereby waives, for the benefit of the Secured Parties: (1) any right to require any Secured Parties, as a condition of payment or performance by such Borrower, to (i) proceed against any other Borrower or any other Person, (ii) proceed against or exhaust any security held from any other Borrower, any Guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of any other Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (2) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Borrower including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Borrower from any cause other than payment in full of the Obligations; (3) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (4) any defense based upon any Secured Party’s errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (5) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Borrower’s obligations hereunder, (ii) the benefit of any statute of limitations affecting such Borrower’s liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments, recharacterization and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (6) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to such Borrower and any right to consent to any thereof; (7) any defense based upon any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Loan Documents and (8) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

The obligations of the Borrowers hereunder shall not, to the extent permitted by applicable law, be affected by (i) the failure of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or a Lender to assert any claim or demand or to enforce any right or remedy against any other Loan Party under the provisions of this Agreement or any other Loan Document or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Loan Documents; (iv) the release, exchange, waiver or foreclosure of any security held by the Master Collateral Agent or the Collateral Administrator for the Obligations or any of them; (v) the failure of the Administrative Agent or a Lender to exercise any right or remedy against any other Loan Party; or (vi) the release or substitution of any Collateral or any other Loan Party.
To the extent permitted by applicable law, each Borrower hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the other Borrower and of any other Loan Party and any circumstances affecting the ability of the Borrowers to perform under this Agreement.

Each Borrower further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Administrative Agent, any Lender or any other Secured Party upon the bankruptcy or reorganization of the other Borrower or any Guarantor, or otherwise.

Section 2.06 [Reserved].

Section 2.07 Interest on Term Loans.

(a) Subject to the provisions of Section 2.08 and 2.09, each Term Loan shall bear interest (computed using the Day Count Fraction) at a rate per annum equal, during each Interest Period applicable thereto, to the LIBO Rate for such Interest Period plus the Applicable Margin.

(b) Accrued interest on all Term Loans shall be payable in arrears on each Payment Date, on the Termination Date and thereafter on written demand and upon any repayment or prepayment thereof (on the amount repaid or prepaid).

Section 2.08 Default Interest. If any Borrower or any Guarantor, as the case may be, shall default in the payment of the principal of or interest on any Term Loan or in the payment of any fee becoming due hereunder, whether at stated maturity, by acceleration or otherwise, the Borrowers or such Guarantor, as the case may be, shall on written demand of the Administrative Agent (which written demand shall be given at the request of the Required Lenders) from time to time pay interest, to the extent permitted by law, on all overdue amounts up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed using the Day Count Fraction) equal to (a) with respect to the principal amount of any Term Loan, the rate then applicable for such Borrowings plus 2.0%, and (b) in the case of interest and fees, the Alternate Base Rate plus 2.0%.

Section 2.09 Alternate Rate of Interest

(a) 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 Borrowers may amend this Agreement to replace LIBO 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 Borrowers 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; provided that, with respect to any proposed amendment containing any SOFR-Based Rate, the Lenders shall be entitled to object only to the Benchmark Replacement Adjustment contained therein. 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 LIBO Rate with a Benchmark Replacement pursuant to this Section 2.09 will occur prior to the applicable Benchmark Transition Start Date.
In connection with the implementation of a Benchmark Replacement, the Administrative Agent, with the written consent of the Borrowers, 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.

The Administrative Agent will promptly notify the Borrowers 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 Required Lenders, as applicable, in each case with the consent of the Borrowers pursuant to this Section 2.09, 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.

Upon receipt by the Borrowers of notice of the commencement of a Benchmark Unavailability Period, (a) the Borrowers may revoke any request for a Borrowing of Eurodollar Term Loans to be made 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 Term Loans bearing interest at a rate determined by reference to the Alternate Base Rate and (b) all calculations of interest by reference to LIBO Rate hereunder shall instead be made by reference to the Alternate Base Rate.

Section 2.10 Repayment of Term Loans; Evidence of Debt

(a) The Term Loans, together with all other Obligations (other than contingent obligations not due and owing) shall, in any event, be paid in full in cash no later than the Termination Date.

(b) Subject to Section 7.01, on each Payment Date on which an Event of Default is not continuing, Available Funds in the Payment Account as of such Payment Date (based upon instructions furnished to it pursuant to Section 2.9 of the Collateral Agency and Accounts Agreement) shall be distributed by the Master Collateral Agent in the following order of priority:
first, (x) ratably to (i) the Depositary and the Master Collateral Agent, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to such Persons pursuant to the terms of the Loan Documents and (ii) the Collateral Administrator, the amount of fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Collateral Administrator pursuant to the terms of the Loan Documents, in an amount not to exceed $200,000 in the aggregate per annum and then (y) ratably to the Administrative Agent, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Administrative Agent pursuant to the terms of the Loan Documents in an amount not to exceed $200,000 in the aggregate per Payment Date and then (z) ratably, the Term Loans’ Pro Rata Share of the amount of fees, expenses and other amounts due and owing to any Independent Director of any SPV Party, in an amount not to exceed $200,000 in the aggregate per Payment Date, in the case of each of clause (x), (y) and (z), to the extent not otherwise paid or provided for or to the extent such parties have agreed with the Borrowers for payment at a later date;

(ii) second, to the Administrative Agent, on behalf of the Lenders, an amount equal to the Interest Distribution Amount with respect to such Payment Date minus the amount of interest paid by the Borrowers on the Term Loans after the immediately preceding Payment Date and prior to such Payment Date;

(iii) third, to the Administrative Agent, on behalf of the Lenders, in an amount equal to the Scheduled Principal Amortization Amount due and payable on such Payment Date;

(iv) fourth, to the Reserve Account if the amount on deposit in the Reserve Account is less than the Aggregate Reserve Account Required Balance, the Term Loans’ Pro Rata Share of such shortfall;

(v) fifth, to the extent not already paid, to the Administrative Agent, on behalf of the Lenders, the amount of any outstanding mandatory prepayments required pursuant to Section 2.12 (including any related Premium due with respect thereto) to be applied in accordance with the terms thereof;

(vi) sixth, after the fifth anniversary of the Closing Date, any “AHYDO catchup payments” on the Term Loans;

(vii) seventh, without duplication, any Premium due and unpaid as of such Payment Date;

(viii) eighth, to pay (x) ratably to the Collateral Administrator, the Depositary and the Master Collateral Agent, and then (y) to the Administrative Agent, and then (z) any other Person (other than Delta and any of its Subsidiaries (provided that any payment to the IP Manager pursuant to the IP Management Agreement shall be permitted pursuant to this clause (viii)), including any Independent Director of any SPV Party and the IP Manager, any additional Obligations due and payable to such Person on such Payment Date, in the case of clause (x) and (y), to the extent not otherwise paid or provided for or to the extent such parties have agreed with the Borrowers for payment at a later date;
(ix) ninth, if an Early Amortization Period was in effect as of the last day of the Related Quarterly Reporting Period, then, to the Administrative Agent on behalf of the Lenders, as a reduction in the outstanding principal balance of the Term Loans, an amount equal to the Early Amortization Payment for such Payment Date;

(x) tenth, to the extent any amounts are due and owing under any other Priority Lien Debt, to the Master Collateral Agent for further distribution to the appropriate Person pursuant to the Collateral Agency and Accounts Agreement; and

(xi) eleventh, all remaining amounts shall be released to or at the direction of Loyalty Co.

For the avoidance of doubt, to the extent Available Funds with respect to any Payment Date are insufficient to pay amounts due hereunder to the Agents, Lenders or any other Person on such Payment Date, the Borrowers and, to the extent provided in Section 9 hereof, the Guarantors, are fully obligated to timely pay such amounts to the Agents, Lenders or other Persons.

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

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Term Loan made hereunder, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof, which in all circumstances shall be consistent with the Register maintained pursuant to Section 10.02(c). The Borrowers shall have the right, upon reasonable notice, to request information regarding the accounts referred to in the preceding sentence.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section 2.10 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Term Loans in accordance with the terms of this Agreement.
Any Lender may request that Term Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall promptly execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns in a form furnished by the Administrative Agent and reasonably acceptable to the Borrowers. Thereafter, the Term Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.02) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

Section 2.11  [Reserved]

Section 2.12  Mandatory Prepayment of Term Loans.

(a)  Within five (5) Business Days of Loyalty Co or any other SPV Party receiving any Net Proceeds from the issuance or incurrence of any Indebtedness of Loyalty Co or any other SPV Party (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.02), the Borrowers shall prepay the Term Loans in an aggregate amount equal to the Term Loans’ Pro Rata Share of such Net Proceeds.

(b)  No later than ten (10) Business Days following the date of receipt by Delta or any of its Subsidiaries of any Net Proceeds in respect of any Recovery Event (in each case, in respect of Collateral) which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Recovery Events since the Closing Date, are in excess of $10.0 million (the “Threshold Amount”, and all such Net Proceeds in excess of the Threshold Amount, “Excess Proceeds”), the Borrowers shall (i) give written notice to the Administrative Agent of such Recovery Event and (ii) offer to prepay the Term Loans in an aggregate amount equal to the Term Loans’ Pro Rata Share of such Excess Proceeds (other than any such Excess Proceeds withheld for reinvestment pursuant to the proviso in this clause (b)) no later than the tenth (10th) Business Day following the date of receipt of such Net Proceeds; provided that (1) so long as no Event of Default shall have occurred and be continuing at the time of receipt of such Excess Proceeds, the Borrowers shall have the option to (x) invest such Excess Proceeds within 365 days of receipt thereof in Qualified Replacement Assets or (y) repair, replace or restore the assets which are the subject of such Recovery Event; and (2) within ten (10) Business Days of the end of such 365 day period (or earlier if the Borrowers so elect), the Borrowers shall offer to prepay the Term Loans in an aggregate amount equal to the Term Loans’ Pro Rata Share of the aggregate amount of such Excess Proceeds not used in accordance with the preceding subclause (1). Any Lender may elect, by notice to the Administrative Agent at least two Business Days prior to the prepayment date, to decline all (but not less than all) of the prepayment of any Class of its Term Loans pursuant to this Section 2.12(b), in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans but was so declined shall be retained by Loyalty Co.

(c)  No later than ten (10) Business Days following the date of receipt by Delta or any of its Subsidiaries of any Net Proceeds in respect of (x) any Collateral Sale of SkyMiles Intellectual Property (other than with respect to any Permitted Pre-paid Miles Purchase or Permitted Disposition) or (y) any Collateral Sale which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Collateral Sales during the fiscal year in which such date occurs, are in excess of $10.0 million (the “CS Threshold Amount”, and all such Net Proceeds in excess of the CS Threshold Amount together with all Net Proceeds of any Collateral Sale of SkyMiles Intellectual Property, “CS Excess Proceeds”), the Borrowers shall offer to prepay the Term Loans in an aggregate amount equal to Term Loans’ Pro Rata Share of such CS Excess Proceeds no later than the tenth (10th) Business Day following the date of receipt of such CS Excess Proceeds. Any Lender may elect, by notice to the Administrative Agent at least two Business Days prior to the prepayment date, to decline all (but not less than all) of the prepayment of any Class of its Term Loans pursuant to this Section 2.12(c), in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans but was so declined shall be retained by Loyalty Co. Notwithstanding anything herein to the contrary, no sales of Collateral shall be permitted during the continuance of any Early Amortization Period or Event of Default or if an Early Amortization Event or Event of Default would result therefrom.

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(d) Within ten (10) Business Days of Delta or any of its Subsidiaries receiving any Net Proceeds as a result of any Contingent Payment Event which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Contingent Payment Events since the Closing Date, are in excess of $50.0 million, the Borrowers shall offer to prepay the Term Loans in an aggregate amount equal to the Term Loans’ Pro Rata Share of such excess Net Proceeds. Any Lender may elect, by notice to the Administrative Agent at least two Business Days prior to the prepayment date, to decline all (but not less than all) of the prepayment of any Class of its Term Loans pursuant to this Section 2.12(d), in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans but was so declined shall be retained by Loyalty Co.

(e) Within ten (10) Business Days of Delta or any of its Subsidiaries receiving any Net Proceeds of a Pre-paid Miles Purchase which Net Proceeds, together with the aggregate amount of Net Proceeds previously received from Pre-paid Miles Purchases since the Closing Date, are in excess of $500.0 million, the Borrowers shall prepay the Term Loans in an aggregate amount equal to the Term Loans’ Pro Rata Share of such excess Net Proceeds; provided that the Borrowers shall not be required to make such prepayment so long as the aggregate amount of Net Proceeds received from Pre-Paid Miles Purchases since the Closing Date is less than $505.0 million.

(f) Within five (5) Business Days following the occurrence of a Parent Change of Control Triggering Event, the Borrowers shall offer to prepay all of each Lender’s Term Loans at a purchase price in cash equal to 100% of the aggregate principal amount of the Term Loans prepaid. The repayment date shall be no later than thirty (30) days from the date such offer is made. Any Lender may elect, by notice to the Administrative Agent at least two (2) Business Days prior to the prepayment date, to decline all (but not less than all) of the prepayment of any Class of its Term Loans pursuant to this Section 2.12(f).

(g) Amounts required to be applied to the prepayment of Term Loans pursuant to Section 2.12(a) through (f) shall be applied to prepay on a pro rata basis the remaining scheduled amortization payments of the Term Loans. To the extent that such amounts are not applied on a Payment Date pursuant to Section 2.10(b), the Borrowers shall provide the Collateral Administrator with payment instructions setting forth the applicable amounts and payees in respect thereof. All prepayments under Section 2.12 shall be accompanied (inclusive of all Premiums owed on account of any such prepayment) by accrued but unpaid interest on the principal amount being prepaid to (but not including) the date of prepayment, plus any Fees (if any) included in, and any losses, costs and expenses, as more fully described in Section 2.15. Term Loans prepaid pursuant to Section 2.12 may not be reborrowed. To the extent that any amounts required to be applied as a prepayment pursuant to this Section 2.12 are on deposit in the Collection Account on any Payment Date on which an Event of Default is not continuing, the portion of such amount allocated to the Term Loans pursuant to the Collateral Agency and Accounts Agreement shall be applied as Available Funds on such Payment Date pursuant to Section 2.10(b).
Section 2.13  Optional Prepayment of Term Loans.

(a) The Borrowers shall have the right, from time to time, to prepay any Term Loans, in whole or in part, upon (i) telephonic notice (followed promptly by written or facsimile notice or notice by electronic mail) to the Administrative Agent or (ii) written or facsimile notice (or notice by electronic mail) to the Administrative Agent, in either case received by 1:00 p.m., on the date that is three (3) Business Days prior to the proposed date of prepayment; provided that each such partial prepayment, if any, shall be in an amount not less than $1.0 million and in integral multiples of $1.0 million.

(b) Any prepayments under Section 2.13 shall be applied to prepay on a pro rata basis the remaining scheduled amortization payments of the Term Loans. To the extent that such amounts are not applied on a Payment Date pursuant to Section 2.10(b), the Borrowers shall provide the Collateral Administrator with payment instructions setting forth the applicable amounts and payees in respect thereof. All prepayments under Section 2.13 shall be accompanied by accrued but unpaid interest on the principal amount being prepaid to (but not including) the date of prepayment, plus any Fees (if any), Premiums (if any), and any losses, costs and expenses, as more fully described in Sections 2.15 hereof. Term Loans prepaid pursuant to Section 2.13 may not be reborrowed.

(c) Each notice of prepayment shall specify the prepayment date, the principal amount of the Term Loans to be prepaid and shall be irrevocable and commit the Borrowers to prepay such Term Loan in the amount and on the date stated therein; provided that the Borrowers may revoke any notice of prepayment under this Section 2.13 if such prepayment would have resulted from a refinancing of any or all of the Obligations hereunder and such refinancing shall not be consummated or shall otherwise be delayed. The Administrative Agent shall, promptly after receiving notice from the Borrowers hereunder, notify each Lender of the principal amount of the Term Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment.

(d) [Reserved].

Section 2.14  Increased Costs.

(a) If any Change in Law shall:
and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting into, continuing or maintaining any Eurodollar Term Loan (or of maintaining its obligation to make any such Term Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder with respect to any Eurodollar Term Loan (whether of principal, interest or otherwise), then, upon the request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender reasonably determines in good faith that any Change in Law affecting such Lender or such Lender’s holding company regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Eurodollar Term Loan made by such Lender to a level below that which such Lender or such Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts, in each case as documented by such Lender to the Borrowers as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) Solely to the extent arising from a Change in Law, the Borrowers shall pay to each Lender (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurodollar funds or deposits, additional interest on the unpaid principal amount of each Eurodollar Term Loan equal to the actual costs of such reserves allocated to such Term Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error) and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Term Loan Commitments or the funding of the Eurodollar Term Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Term Loan Commitment or Eurodollar Term Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Term Loan, provided that the Borrowers shall have received at least fifteen (15) days’ prior written notice (with a copy to the Administrative Agent, and which notice shall specify the Statutory Reserve Rate, if any, applicable to such Lender) of such additional interest or cost from such Lender. If a Lender fails to give written notice fifteen (15) days prior to the relevant Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.
(d) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.14 and the basis for calculating such amount or amounts shall be delivered to the Borrowers and shall be prima facie evidence of the amount due. The Borrowers shall pay such Lender the amount due within fifteen (15) days after receipt of such certificate.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.14 shall not constitute a waiver of such Lender’s right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section 2.14 for any increased costs or reductions incurred more than one hundred eighty (180) days prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof. The protection of this Section 2.14 shall be available to each Lender regardless of any possible contention as to the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

(f) The Borrowers shall not be required to make payments under this Section 2.14 to any Lender if (A) a claim hereunder arises solely through circumstances peculiar to such Lender and which do not affect commercial banks in the jurisdiction of organization of such Lender generally, (B) the claim arises out of a voluntary relocation by such Lender of its applicable lending office (it being understood that any such relocation effected pursuant to Section 2.18 is not “voluntary”), or (C) such Lender is not seeking similar compensation for such costs to which it is entitled from its borrowers generally in commercial loans of a similar size.

(g) Notwithstanding anything herein to the contrary, regulations, requests, rules, guidelines or directives implemented after the Closing Date pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act shall be deemed to be a Change in Law; provided that any determination by a Lender of amounts owed pursuant to this Section 2.14 to such Lender due to any such Change in Law shall be made in good faith in a manner generally consistent with such Lender’s standard practice.

Section 2.15 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Term Loan other than on a Payment Date (including as a result of the occurrence and continuance of an Event of Default), (b) the failure to borrow or prepay any Eurodollar Term Loan on the date specified in any notice delivered pursuant hereto, or (c) the assignment of any Eurodollar Term Loan other than on a Payment Date as a result of a request by the Borrowers pursuant to Section 2.18 or Section 10.08(d), then, in any such event, at the request of such Lender, the Borrowers shall compensate such Lender for the loss, cost and expense sustained by such Lender attributable to such event; provided that in no case shall this Section 2.15 apply to any payment pursuant to Section 2.10(b). Such loss, cost or expense to any Lender shall be deemed to include an amount reasonably determined in good faith by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Loan had such event not occurred, at the applicable rate of interest for such Term Loan (excluding, however the Applicable Margin included therein, if any), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, for the period that would have been the Interest Period for such Term Loan), over (ii) the amount of interest (as reasonably determined by such Lender) which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts (and the basis for requesting such amount or amounts) that such Lender is entitled to receive pursuant to this Section 2.15 shall be delivered to the Borrowers and shall be prima facie evidence of the amount due. The Borrowers shall pay such Lender the amount due within fifteen (15) days after receipt of such certificate.
Section 2.16 Taxes.

(a) Any and all payments by or on account of any Obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; provided that if any Indemnified Taxes or Other Taxes are required to be deducted or withheld from any amounts payable to any Agent or any Lender, as determined in good faith by the applicable Withholding Agent, then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after making all required deductions or withholdings for any Indemnified Taxes or Other Taxes (including deductions or withholdings for any Indemnified Taxes or Other Taxes applicable to additional sums payable under this Section 2.16), the applicable Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable Withholding Agent shall make such deductions or withholdings and (iii) the applicable Withholding Agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition (and without duplication of any payments with respect to Other Taxes pursuant to Section 2.16(a)), the Borrowers, shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Without duplication of amounts payable pursuant to Section 2.16(a) or 2.16(b), the Borrowers shall, jointly and severally, indemnify each Agent and each Lender, within thirty (30) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by or on behalf of or withheld or deducted from payments owing to such Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. After an Agent or a Lender, as the case may be, learns of the imposition of Indemnified Taxes or Other Taxes, such party will act in good faith to notify the Borrowers promptly of it obligation thereunder. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender, by the Administrative Agent on its own behalf or on behalf of a Lender, or by the Collateral Administrator or the Master Collateral Agent on its own behalf, shall be conclusive absent manifest error.
(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment to the extent available, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Each Lender shall, within ten (10) days after written demand therefor, indemnify the Administrative Agent, the Collateral Administrator and the Master Collateral Agent (to the extent the Administrative Agent, the Collateral Administrator or the Master Collateral Agent has not been reimbursed by the Borrowers) for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender and that are payable or paid by the Administrative Agent, the Collateral Administrator or the Master Collateral Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent, the Collateral Administrator or the Master Collateral Agent, respectively in good faith. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent, the Collateral Administrator or the Master Collateral Agent, as applicable, shall be conclusive absent manifest error.

(f) Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any of the Borrowers is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrowers (with a copy to the Administrative Agent), at the time or times prescribed by applicable law and as reasonably requested by the Borrowers, such properly completed and executed documentation prescribed by applicable law or requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate; provided that such Lender shall not be required to deliver any documentation pursuant to this Section 2.16(f) that such Lender is not legally able to deliver.

(g) (1) Without limiting the generality of the foregoing, each Lender that is not a “United States person” (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Borrowers 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 when the previously delivered certificates and/or forms expire, or upon request of the Borrowers or the Administrative Agent) whichever of the following is applicable:

(i) two (2) properly completed and duly executed originals of the applicable Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,
(ii) two (2) properly completed and duly executed originals of Internal Revenue Service Form W-8ECI (or any successor form),

(iii) two (2) properly completed and duly executed originals of Internal Revenue Service Form W-8IMY (or any successor form), accompanied by Internal Revenue Service Form W-8ECI (or any successor form), the applicable Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form), Internal Revenue Service Form W-9 (or any successor form), and/or other certification documents from each beneficial owner, as applicable,

(iv) in the case of a Foreign Lender claiming the benefits of exemption for portfolio interest under Section 881(c) of the Code (the “Portfolio Interest Exemption”), (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code, (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (D) conducting a trade or business in the United States with which the relevant interest payments are effectively connected (such certificate, a “Certificate Re: Non-Bank Status”), or if such Foreign Lender is an entity treated as a partnership, an Internal Revenue Service Form W-8IMY (or any successor form), together with a Certificate Re: Non-Bank Status on behalf of any beneficial owners claiming the Portfolio Interest Exemption, and (y) two (2) properly completed and duly executed originals of the applicable Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor form), or in the case of a Foreign Lender that is treated as a partnership, two (2) properly completed and duly executed originals of Internal Revenue Service Form W-8IMY (or any successor form), together with the appropriate Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor form) on behalf of each beneficial owner claiming the Portfolio Interest Exemption, or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax and reasonably requested by the Borrowers or the Administrative Agent to permit the Borrowers to determine the withholding or required deduction to be made.

(h) Any Lender that is a “United States person” (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Administrative Agent and the Borrowers, on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter when the previously delivered certificates and/or forms expire, or upon request of the Borrowers or the Administrative Agent), two (2) copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such Lender is entitled to an exemption from United States backup withholding.

(i) If a payment made to a Lender under this Agreement or 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 Borrowers and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers 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 Borrowers or the Administrative Agent as may be necessary for the Borrowers or the Administrative Agent to comply with their obligations under FATCA, to determine that such Lender has or has not 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 paragraph (i), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.
If an Agent or a Lender determines, in its sole discretion, reasonably exercised in good faith, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by one or more Loan Parties or with respect to which one or more Loan Parties has paid additional amounts pursuant to this Section 2.16, it shall pay over an amount equal to such refund to the applicable Loan Parties (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Parties under this Section 2.16 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Agent or such Lender incurred in obtaining such refund (including Taxes imposed with respect to such refund) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Parties, upon the request of such Agent or such Lender, agrees to repay the amount paid over to such Loan Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent or such Lender in the event such Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (k), in no event will any Agent or any Lender be required to pay any amount to the Borrowers pursuant to this paragraph (k) if, and then only to the extent, the payment of such amount would place such Agent or such Lender in a less favorable net after-Tax position than such Agent or such Lender would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.16(k) shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrowers or any other Person.

Each of the Administrative Agent and the Collateral Administrator shall provide the Borrowers with two (2) properly completed and duly executed originals of, if it is a “United States person” (as defined in Section 7701(a)(30) of the Code), Internal Revenue Service Form W-9 certifying that it is exempt from U.S. federal backup withholding, and, if it is not a United States person, (1) Internal Revenue Service Form W-8ECI with respect to payments to be received by it as a beneficial owner and (2) Internal Revenue Service Form W-8IMY (together with required accompanying documentation) with respect to payments to be received by it on behalf of the Lenders, and shall update such forms periodically upon the reasonable request of the Borrowers.

Section 2.17 Payments Generally; Pro Rata Treatment.


(a) The Borrowers shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.14 or 2.15, or otherwise) prior to 3:00 p.m., on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, NY 10017, pursuant to wire instructions to be provided by the Administrative Agent, except that payments pursuant to Sections 2.14, 2.15 and 10.04 shall be made directly by the Borrowers to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. All payments hereunder shall be made in U.S. Dollars.

(b) [Reserved].

(c) Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04, 8.04, 8.07 or 10.04(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.

(e) Pro Rata Treatment.

(i) Each payment by the Borrowers in respect of the Term Loans shall be applied to the amounts of such obligations owing to the Lenders pro rata according to the respective amounts then due and owing to the Lenders.

(ii) Each payment (including each prepayment) by the Borrowers on account of principal of and interest on the Term Loans shall be made to the applicable Class or Classes of Term Loans pro rata according to the respective outstanding principal amounts of the Term Loans then held by the Lenders.

Section 2.18 Mitigation Obligations; Replacement of Lenders.
(a) If the Borrowers are required to pay any additional amount or indemnification payment to any Lender under Section 2.14 or to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder, to assign its rights and obligations hereunder to another of its offices, branches or affiliates, to file any certificate or document reasonably requested by the Borrowers or to take other reasonable measures, if, in the judgment of such Lender, such designation, assignment, filing or other measures (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense (other than immaterial costs and expenses) and would not otherwise be materially disadvantageous to such Lender. The Borrowers hereby, jointly and severally, agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If, after the date hereof, any Lender requests compensation under Section 2.14 or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender becomes a Defaulting Lender, Non-Extending Lender or Non-Consenting Lender then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) prepay such Lender’s outstanding Term Loans (on a non-pro rata basis), or (ii) require such Lender to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.02), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), in any case as of a Business Day specified in such notice from the Borrowers; provided that (i) such terminated or assigning Lender shall have received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts due, owing and payable to it hereunder at the time of such termination or assignment, from the assignee (to the extent of such outstanding principal and accrued interest and fees in the case of an assignment) or the Borrowers (in the case of all other amounts) and (ii) in the case of an assignment due to payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments.

Section 2.19 Certain Fees. The Borrowers shall, jointly and severally, pay (i) to the Administrative Agent and the Lead Arrangers, the fees to which each is respectively entitled as set forth in the Fee Letter, among the Lead Arrangers and the Borrowers, and the Administrative Agent Fee Letter, among the Administrative Agent and the Borrowers, each dated as of September 14, 2020 (together, the “Fee Letter”), and (ii) to the Collateral Administrator and the Master Collateral Agent the fees set forth in the Collateral Administrator and Master Collateral Agent Fee Letter, dated as of the date hereof (the “Collateral Administrator and Master Collateral Agent Fee Letter”), among the Collateral Administrator, the Master Collateral Agent and the Borrowers dated as of the date hereof, in each case at the times set forth therein. Other than the amounts to be paid on the Closing Date, all amounts due and owing pursuant to the Fee Letter shall be subject to the payment priorities set forth in Section 2.10(b).

Section 2.20 [Reserved].
Section 2.21  **Premium.** Upon the occurrence of an Applicable Trigger Event, the Borrowers agree to pay to the Administrative Agent for the benefit of each Lender that holds an applicable Term Loan:

(a) If such Applicable Trigger Event occurs prior to the 3rd anniversary of the Closing Date, the Make-Whole Amount.

(b) If such Applicable Trigger Event occurs on or after the 3rd anniversary of the Closing Date, but prior to the 4th anniversary of the Closing Date, 4.0% of the amount prepaid or repaid (or deemed prepaid or repaid).

(c) If such Applicable Trigger Event occurs on or after the 4th anniversary of the Closing Date, but prior to the 5th anniversary of the Closing Date, 2.0% of the amount prepaid or repaid (or deemed prepaid or repaid).

(d) If such Applicable Trigger Event occurs on or after the 5th anniversary of the Closing Date, 0.0% of the amount prepaid or repaid (or deemed prepaid or repaid).

Any amounts payable in accordance with this Section 2.21 shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Trigger Event, and the Borrowers agree that it is reasonable under the circumstances currently existing. The Loan Parties expressly agree that (i) the premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel, (ii) the premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between Lenders and the Borrowers giving specific consideration in the transaction for such agreement to pay the premium, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.21, Section 2.12 and Section 2.13, (v) the agreement to pay the premium is a material inducement to the Lenders to make the Term Loans, and (vi) the premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such Applicable Trigger Event.

THE PREMIUM IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, AND THE PARTIES HERETO (OTHER THAN THE COLLATERAL ADMINISTRATOR) EACH ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT THE SETTLEMENT AMOUNT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

Section 2.22  **Nature of Fees.** Except as otherwise specified in the Fee Letter or the Collateral Administrator and Master Collateral Agent Fee Letter, as applicable, all Fees shall be paid on the dates due, in immediately available funds, (a) to the Administrative Agent, as provided herein and in the Fee Letter or (b) the Collateral Administrator or Master Collateral Agent, as applicable, as provided in the Collateral Administrator and Master Collateral Agent Fee Letter, as applicable. Once paid, none of the Fees shall be refundable under any circumstances.
Section 2.23  **Right of Set-Off.** Upon the occurrence and during the continuance of any Event of Default pursuant to Section 7.01(b), the Administrative Agent, the Master Collateral Agent, the Collateral Administrator and each Lender (and their respective banking Affiliates) are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final but excluding the Escrow Accounts) at any time held and other indebtedness at any time owing by the Administrative Agent, the Master Collateral Agent, the Collateral Administrator and each Lender (or any of such banking Affiliates) to or for the credit or the account of any Loan Party against any and all of any such overdue amounts owing to such Person under the Loan Documents, irrespective of whether or not the Administrative Agent, the Master Collateral Agent, the Collateral Administrator or such Lender shall have made any demand under any Loan Document; provided that in the event that any Defaulting Lender exercises any such right of setoff, (x) all amounts so set off will be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.26(d) and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender will 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, the Master Collateral Agent, the Collateral Administrator and the Administrative Agent agree promptly to notify the Loan Parties after any such set-off and application made by such Lender, the Master Collateral Agent, the Collateral Administrator or the Administrative Agent (or any of such banking Affiliates), as the case may be, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, the Master Collateral Agent, the Collateral Administrator and the Administrative Agent under this Section 2.23 are in addition to other rights and remedies which such Lender, the Administrative Agent, the Master Collateral Agent and the Collateral Administrator may have upon the occurrence and during the continuance of any Event of Default.

Section 2.24  **Peak Debt Service Coverage Cure.** To the extent that Collections received in the Collection Account with respect to any Quarterly Reporting Period are insufficient to satisfy the Peak Debt Service Coverage Ratio Test for such Quarterly Reporting Period (the “Shortfall Period”), at any time prior to the related Determination Date the Borrowers may deposit, or cause to be deposited into the Collection Account, funds in an amount necessary to satisfy the Peak Debt Service Coverage Ratio Test for such Shortfall Period (determined as if such deposited funds constitute Collections attributable to such Shortfall Period); provided that (x) deposits made pursuant to this Section 2.24 shall not occur more than five times in the aggregate prior to the Term Loan Maturity and no more than two times in any 12 month period, (y) any such amounts received in the Collection Account on or prior to the applicable Determination Date in accordance with this Section 2.24 will be treated as Collections for purposes of the Peak Debt Service Coverage Ratio Test for the Shortfall Period and (z) amounts deposited in the Collection Account after such Determination Date and designated as Cure Amounts by the Borrowers shall be treated as Collections for the Quarterly Reporting Period in which such funds were deposited and shall not be included in the Peak Debt Service Coverage Ratio Test for the Shortfall Period (amounts deposited pursuant to this paragraph being, “**Cure Amounts**”).
Section 2.25 Payment of Obligations. Subject to the provisions of Section 7.01, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents of the Loan Parties, the Lenders shall be entitled to immediate payment of such Obligations.

Section 2.26 Defaulting Lenders.

(a) If at any time any Lender becomes a Defaulting Lender, then the Borrowers may replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.02(b) (with the assignment fee to be waived in such instance and subject to any consents required by such Section) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrowers to find a replacement Lender.

(b) Any Lender being replaced pursuant to Section 2.26(a) shall (i) execute and deliver to the Administrative Agent, an Assignment and Acceptance with respect to such Lender’s outstanding Term Loan Commitments and Term Loans, and (ii) deliver any documentation evidencing such Term Loans to the Borrowers or the Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as specified by the Borrowers and such assignee, of the assigning Lender’s outstanding Term Loan Commitments and Term Loans, (B) all obligations of the Borrowers owing to the assigning Lender relating to the Term Loan Commitments and Term Loans so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance (including, without limitation, any amounts owed under Section 2.15 due to such replacement occurring on a day other than a Payment Date), and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate documentation executed by the Borrowers, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Term Loan Commitments and Term Loans, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender; provided that an assignment contemplated by this Section 2.26(b) shall become effective notwithstanding the failure by the assigning Lender to deliver the Assignment and Acceptance contemplated by this Section 2.26(b), so long as the other actions specified in this Section 2.26(b) shall have been taken.

(c) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law, 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” and Section 10.08.

(d) Any amount paid by the Borrowers or otherwise received by the Administrative Agent for the account of a Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will not be paid or distributed to such Defaulting Lender, but shall instead be retained by the Administrative Agent in a segregated account until (subject to Section 2.26(f)) the termination of the Term Loan Commitments and payment in full of all obligations of the Borrowers hereunder and will be applied by the Collateral Administrator, to the fullest extent permitted by law, to the making of payments from time to time in the following order of priority:
first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent;

second, to the payment of the Default Interest and then current interest due and payable to the Lenders which are Non-Defaulting Lenders hereunder, ratably among them in accordance with the amounts of such interest then due and payable to them,

third, to the payment of fees then due and payable to the Non-Defaulting Lenders hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them,

fourth, to pay principal then due and payable to the Non-Defaulting Lenders hereunder ratably in accordance with the amounts thereof then due and payable to them,

fifth, to the ratable payment of other amounts then due and payable to the Non-Defaulting Lenders, and

sixth, after the termination of the Term Loan Commitments and payment in full of all obligations of the Borrowers hereunder, to pay amounts owing under this Agreement to such Defaulting Lender or as a court of competent jurisdiction may otherwise direct.

(e) The Borrowers may terminate the unused amount of the Term Loan Commitment of any Lender that is a Defaulting Lender upon not less than five (5) Business Days’ prior notice to the Administrative Agent (which shall promptly notify the Non-Defaulting Lenders thereof), and in such event the provisions of Section 2.26(d) will apply to all amounts thereafter paid by the Borrowers for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts), provided that (i) no Event of Default shall have occurred and be continuing and (ii) such termination shall not be deemed to be a waiver or release of any claim any Borrower, the Administrative Agent, or any Lender may have against such Defaulting Lender.

(f) If the Borrowers and the Administrative Agent agree in writing that a Lender that is a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the Non-Defaulting Lenders, 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 amounts then held in the segregated account referred to in Section 2.26(d)), such Lender shall purchase at par such portions of outstanding Term Loans of the other Lenders, and/or make such other adjustments, as the Administrative Agent may determine to be necessary to cause the Lenders to hold Term Loans on a pro rata basis in accordance with their respective Term Loan Commitments, whereupon such Lender shall cease to be a Defaulting Lender and will be a Non-Defaulting Lender; provided that no adjustments shall be made retroactively with respect to fees accrued while such 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 Non-Defaulting Lender shall constitute a waiver or release of any claim of any party hereunder arising from such Lender’s having been a Defaulting Lender.
Notwithstanding anything to the contrary herein, the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 8.05.

Section 2.27 Incremental Term Loans.

(a) **Borrowers Request.** The Borrowers may, by written notice to the Administrative Agent from time to time, request an increase to the existing Facility or one or more new term loan facilities (the commitments thereunder, the “Incremental Commitments” and the Term Loans thereunder, the “Incremental Term Loans”) in an amount not less than $25.0 million individually from one or more Incremental Lenders (which may include any existing Lender) willing to provide such Incremental Commitments in their sole discretion; provided that each Incremental Lender (which is not an existing Lender) shall be subject to the approval requirements of Section 10.02. Each such notice shall specify (i) the date (each, an “Increase Effective Date”) on which the Borrowers propose that the proposed Incremental Commitments shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to the Administrative Agent (or such shorter notice as agreed to by the Administrative Agent) and (ii) the identity of each Eligible Assignee to whom the Borrowers propose any portion of such Incremental Commitments be allocated and the amounts of such allocations (each provider of the Incremental Commitments referred to herein as an “Incremental Lender”); provided that any existing Lender approached to provide all or a portion of the proposed Incremental Commitments may elect or decline, in its sole discretion, to provide such Incremental Commitment.

(b) **Conditions.** Any new Incremental Commitments shall become effective as of such Increase Effective Date provided that:

(i) each of the conditions set forth in Section 4.02 shall be satisfied or waived by the Incremental Lenders on or prior to such Increase Effective Date;

(ii) no Default, Event of Default or Early Amortization Event shall have occurred and be continuing or would result from giving effect to the Incremental Commitments on, or the making of any Incremental Term Loans on, such Increase Effective Date;

(iii) after giving effect to the Borrowing of the applicable Incremental Term Loans on the Increase Effective Date (and assuming such Borrowing on such date in the case of any delayed draw term loan), the aggregate outstanding principal amount of the Priority Lien Debt, giving effect to any reductions of such outstanding amount including as a result of any voluntary prepayments (including those pursuant to debt buybacks made by the Borrowers in an amount equal to the face value of such indebtedness), mandatory prepayments and amortization of Priority Lien Debt prior to such time, shall not (excluding any fees, premiums, costs and other expenses in connection therewith) exceed the Priority Lien Cap;
the Rating Agency Condition has been satisfied;

the pro forma Peak Debt Service Coverage Ratio (calculated using the Maximum Quarterly Debt Service of the then existing Term Loans and the Incremental Term Loans) as of the immediately preceding Determination Date, immediately after giving effect to the making of the Incremental Term Loans shall be more than (i) for any date of determination prior to the Determination Date occurring in July 2022, 1.50 to 1.00, (ii) for any date of determination during the period beginning on or after the Determination Date occurring in July 2022 but excluding the Determination Date occurring in January 2023, 1.75 to 1.00 and (iii) for any date of determination occurring on or after the Determination Date in January 2023, 2.25 to 1.00; and

there is no action, proceeding, or investigation pending or threatened in writing against any Loan Party before any court or administrative agency that has a reasonable likelihood of adverse determination, which determination would reasonably be expected to result in a Material Adverse Effect.

Terms of Incremental Commitments. The terms and provisions of Term Loans made pursuant to any Incremental Commitments shall be as follows:

(i) terms and provisions with respect to interest rates, maturity date and amortization schedule of Incremental Term Loans made pursuant to any Incremental Commitments shall be as agreed upon between the Borrowers and the applicable Lenders providing such Incremental Term Loans (it being understood that the Incremental Term Loans may be part of the Initial Term Loans or any other Class of Term Loans);

(ii) the Weighted Average Life to Maturity of any Term Loans made pursuant to Incremental Commitments shall be no shorter than the remaining Weighted Average Life to Maturity of the existing Term Loans;

(iii) the maturity date for such Term Loans shall be on or after the Latest Maturity Date;

(iv) to the extent that the terms and provisions of Incremental Term Loans are not identical to an outstanding Class of Term Loans (except to the extent permitted by clauses (i), (iii) and (iv) above), such terms and conditions shall (A) be reasonably acceptable to the Administrative Agent or (B) not be materially more restrictive to the Borrowers than the terms of the then-outstanding Term Loans (except for (1) covenants, events of default and guarantees applicable only to periods after the Latest Maturity Date (as of the date of the incurrence of such Incremental Term Loans) and (2) subject to clause (vi), pricing, fees, rate floors, premiums, optional prepayment or redemption terms) unless the Lenders under the then-outstanding Term Loans, receive the benefit of such more restrictive terms; provided that in no event shall such Incremental Term Loans be subject to events of default resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the then-outstanding Term Loans;
such Incremental Term Loans shall not be subject to any Guarantee by any Person other than a Loan Party and shall not be secured by a Lien on any asset other than any asset constituting Collateral (except to the extent that any additional collateral security is added to the Collateral to secure, and additional guarantees are added for the benefit of, the then-outstanding Term Loans); and

(vi) the All-In Yield applicable to any Incremental Term Loans shall be determined by the Borrowers and the applicable Lenders providing such Incremental Term Loans; provided that if the All-In Yield of any such Incremental Term Loans exceeds the All-In Yield on any then-existing Term Loans (calculated in the same manner and after giving effect to any amendment to interest rate margins applicable to such existing Term Loans after the Closing Date but immediately prior to the time of the making of such Incremental Term Loans) by more than 0.50%, the applicable margins applicable to such existing Term Loans shall be increased to the extent necessary so that the yield on such Term Loans is 0.50% less than the All-In Yield on such Incremental Term Loans (it being agreed that any increase in yield to such existing Term Loans required due to the application of a LIBO Rate or Alternate Base Rate floor on any Incremental Term Loans shall be effected solely through an increase in (or implementation of, as applicable) any LIBO Rate or Alternate Base Rate floor applicable to such existing Term Loans).

The Incremental Commitments shall be effected by a joinder agreement (the “Increase Joinder”) executed by the Borrowers, the Administrative Agent and each Incremental Lender making such Incremental Commitment, in form and substance satisfactory to each of them. The Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.27. In addition, unless otherwise specifically provided herein, all references in the Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to any Term Loans made pursuant to Incremental Commitments and this Agreement.

(d) Making of New Term Loans. On any Increase Effective Date on which one or more Incremental Commitments becomes effective, subject to the satisfaction of the foregoing terms and conditions, each Incremental Lender holding such Incremental Commitment shall make an Incremental Term Loan to the Borrowers in an amount equal to its Incremental Commitment.
Equal and Ratable Benefit. The Incremental Term Loans and Incremental Commitments established pursuant to this Section 2.27 shall constitute Term Loans and Term Loan Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents and shall, without limiting the foregoing, benefit equally and ratably from the security interests created by the Collateral Documents.

Section 2.28 Extension of Term Loans.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, a “Extension Offer”), made from time to time by the Borrowers to all Lenders holding Term Loans with like maturity date, on a pro rata basis (based on the aggregate Term Loan Commitments with like maturity date) and on the same terms to each such Lender, the Borrowers are hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in any such Extension Offers to extend the scheduled maturity date with respect to all or a portion of any outstanding principal amount of such Lender’s Term Loans and otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including, without limitation, by changing the interest rate or fees payable in respect of such Term Loan Commitments) (each, an “Extension”, and each group of Term Loans, as so extended, as well as the original Term Loans not so extended, being a “tranche of Term Loans”, and any Extended Term Loan shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted), so long as the following terms are satisfied or waived:

(i) no Event of Default shall have occurred and be continuing at the time the offering document in respect of an Extension Offer is delivered to the applicable Lenders (the “Extension Offer Date”);

(ii) except as to interest rates, fees, scheduled amortization payments of principal and final maturity (which shall be as set forth in the relevant Extension Offer), the Term Loan of any Lender that agrees to an Extension with respect to such Term Loan extended pursuant to an Extension Amendment (an “Extended Term Loan”), shall be a Term Loan with the same terms as the original Term Loans; provided that (1) the permanent repayment of Extended Term Loans after the applicable Extension shall be made on a pro rata basis with all other Term Loans, except that the Borrowers shall be permitted to permanently repay any such tranche of Term Loans on a better than a pro rata basis as compared to any other tranche of Term Loans with a later maturity date than such tranche of Term Loans, (2) assignments and participations of Extended Term Loans shall be governed by the same assignment and participation provisions applicable to Term Loans, (3) the relevant Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of such Extension Amendment (immediately prior to the establishment of such Extended Term Loans), (4) Extended Term Loans may have call protection as may be agreed by the Borrowers and the applicable Lenders of such Extended Term Loans, (5) no Extended Term Loans may be optionally prepaid prior to the date on which all Term Loans with an earlier Term Loan Maturity Date are repaid in full, unless such optional prepayment is accompanied by a pro rata optional prepayment of such other Term Loans and (6) at no time shall there be Term Loans hereunder (including Extended Term Loans and any original Term Loans) which have more than five different maturity dates;
(iii) all documentation in respect of such Extension shall be consistent with the foregoing; and

(iv) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrowers.

For the avoidance of doubt, no Lender shall be obligated to accept any Extension Offer.

(b) [Reserved].

(c) With respect to all Extensions consummated by the Borrowers pursuant to this Section 2.28, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.12 or Section 2.13 and (ii) each Extension Offer shall specify the minimum amount of Term Loans to be tendered, which shall be a minimum amount reasonably approved by the Administrative Agent (a “Minimum Extension Condition”). The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.28 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.12, 2.17 and 8.08) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.28.

(d) The consent of the Administrative Agent shall not be required to effectuate any Extension. No consent of any Lender shall be required to effectuate any Extension, other than the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans (or a portion thereof), as applicable. All Extended Term Loans and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a pari passu basis with all other applicable Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (each, an “Extension Amendment”) with the Borrowers as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrowers in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.28.

(e) In connection with any Extension, the Borrowers shall provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including, without limitation, regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.28.
SECTION 3.

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to make Term Loans hereunder, each Loan Party jointly and severally represents and warrants as follows:

Section 3.01 Organization and Authority. Each of the Loan Parties (a) is duly organized or incorporated, validly existing and in good standing (to the extent such concept is applicable in the applicable jurisdiction) under the laws of the jurisdiction of its organization or incorporation and is duly qualified and in good standing in each other jurisdiction in which the failure to so qualify would have a Material Adverse Effect and (b) has the requisite corporate or limited liability company power and authority to effect the Transactions and (c) has the requisite power and authority and the legal right to own or lease and operate their properties, pledge or grant other security interests over the Collateral and to conduct their business as now or currently proposed to be conducted.

Section 3.02 Air Carrier Status. Delta is an “air carrier” within the meaning of Section 40102 of Title 49 and holds a certificate under Section 41102 of Title 49. Delta holds an air carrier operating certificate issued pursuant to Chapter 447 of Title 49. Delta is a “citizen of the United States” as defined in Section 40102(a)(15) of Title 49 and as that statutory provision has been interpreted by the DOT pursuant to its policies (a “United States Citizen”). Delta possesses all necessary certificates, franchises, licenses, permits, rights, designations, authorizations, exemptions, concessions, frequencies and consents which relate to the operation of the routes flown by it and the conduct of its business and operations as currently conducted except where failure to so possess would not, in the aggregate, have a Material Adverse Effect.

Section 3.03 Due Execution. The execution, delivery and performance by the Loan Parties of each of the Transaction Documents to which it is a party:

(a) are within the respective corporate or limited liability company powers of such Loan Party, have been duly authorized by all necessary corporate or limited liability company action, including the consent of shareholders or members where required, and do not (i) contravene the charter, memorandum and articles of association, by-laws or limited liability company agreement (or equivalent documentation) of such Loan Party, (ii) violate any applicable law (including, without limitation, the Securities Exchange Act of 1934) or regulation (including, without limitation, Regulations T, U or X of the Board), or any order or decree of any court or Governmental Authority, other than violations by a Loan Party which would not reasonably be expected to have a Material Adverse Effect or (iii) conflict with or result in a breach of, or constitute a default under, any material indenture, mortgage or deed of trust or any material lease, agreement or other instrument binding on a Loan Party or any of their properties, which, in the aggregate, would reasonably be expected to have a Material Adverse Effect; and
(b) do not require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority or any other Person, other than (i) the filing of financing statements under the UCC, (ii) the filings and consents contemplated by the Collateral Documents (including appropriate filings with the U.S. Patent and Trademark Office), (iii) approvals, consents and exemptions that have been obtained on or prior to the Closing Date and remain in full force and effect, (iv) consents, approvals and exemptions that the failure to obtain in the aggregate would not be reasonably expected to result in a Material Adverse Effect and (v) routine reporting obligations. Each Transaction Document to which a Loan Party is a party has been duly executed and delivered by the Loan Parties party thereto. This Agreement and the other Transaction Documents to which any Loan Party is a party, when delivered hereunder or thereunder, will be a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.04 [Reserved].

Section 3.05 Financial Statements; Material Adverse Change.

(a) Delta has furnished to the Administrative Agent on behalf of the Lenders copies of the audited consolidated financial statements of Delta and its Subsidiaries for the fiscal year ended December 31, 2019, reported on by Ernst & Young LLP. Such financial statements present fairly, in all material respects, in accordance with GAAP, the financial condition, results of operations and cash flows of Delta and its Subsidiaries on a consolidated basis as of the date thereof and for the period covered thereby (subject to normal year-end audit adjustments and the absence of footnotes in the case of the unaudited financial statements). Documents required to be delivered pursuant to this Section 3.05(a) which are made available via EDGAR, or any successor system of the SEC, in Delta’s Annual Report on Form 10-K, shall be deemed delivered to the Administrative Agent and the Lenders on the date such documents are made so available.

(b) Since December 31, 2019, there has been no Material Adverse Change.

Section 3.06 [Reserved].

Section 3.07 Liens. There are no Liens of any nature whatsoever on any Collateral other than Permitted Liens.

Section 3.08 Use of Proceeds. The proceeds of the Term Loans received on the Closing Date shall be used (a) to fund the Reserve Account, (b) to fund the Collection Account and such proceeds of the Term Loans deposited into the Collection Account will be distributed by Loyalty Co to HoldCo 3 and subsequently by HoldCo 3 to HoldCo 2 to make the Delta Intercompany Loan to Delta and (c) to pay transaction costs, fees and expenses as contemplated hereby and as referred to in Section 2.19), and no part of the proceeds of any Term Loan will be used for any purpose which would violate, or be inconsistent with, any of the margin regulations of the Board.
Section 3.09  Litigation and Compliance with Laws.

(a) Except as disclosed in Delta’s Annual Report on Form 10-K for 2019 or any report filed by Delta on Form 10-Q or Form 8-K with the SEC after December 31, 2019, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Loan Parties, threatened against any Loan Party or any of their respective properties (including any properties or assets that constitute Collateral under the terms of the Loan Documents), before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that (i) are likely to have a Material Adverse Effect or (ii) could reasonably be expected to affect the legality, validity, binding effect or enforceability of the Loan Documents, the IP Agreements, the Intercompany Agreements or the SkyMiles Agreements or, in any material respect, the rights and remedies of the Secured Parties under the Loan Documents or in connection with the Transactions.

(b) Except with respect to any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, each Loan Party to its knowledge is currently in compliance 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 ownership of its property.

Section 3.10  [Reserved].

Section 3.11  [Reserved].

Section 3.12  [Reserved].

Section 3.13  Investment Company Act. No Loan Party is, or is required to be, registered as an “investment company” under the 1940 Act.

Section 3.14  Ownership of Collateral.

(a) Each Grantor has good title, leasehold, license or rights to use, all Collateral (other than Intellectual Property and data, which is addressed below in clause (b)) owned or purported to be owned by it that is material to the conduct of the business of such Grantor, in each case free and clear of all Liens other than Permitted Liens.

(b) Except for Intellectual Property and data that is not material, individually or in the aggregate, to the conduct of the business of Loyalty Co, Loyalty Co has good title to all Intellectual Property and data that is Collateral owned or purported to be owned by it, in each case free and clear of all Liens other than Permitted Liens, subject to the filing of assignments at the applicable intellectual property office for Intellectual Property contributed directly or indirectly to Loyalty Co pursuant to the Contribution Agreements.

Section 3.15  Perfected Security Interests. The Collateral Documents, taken as a whole, are effective to create in favor of the Master Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable security interest in all of the Collateral to the extent purported to be created thereby, subject as to enforceability to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. With respect to the Collateral as of the Closing Date, at such time as (a) financing statements in appropriate form are filed in the appropriate offices (and the appropriate fees are paid), (b) the execution of Account Control Agreements, and (c) the appropriate filings with the United States Patent and Trademark Office are made, the Master Collateral Agent, for the benefit of the Secured Parties, shall have a first priority perfected security interest and/or mortgage (or comparable Lien) in all of such Collateral to the extent that the Liens on such Collateral may be perfected upon the filings, registrations or recordations or upon the taking of the actions described in clauses (a), (b) and (c) above, subject in each case only to Permitted Liens, and such security interest is entitled to the benefits, rights and protections afforded under the Collateral Documents applicable thereto (subject to the qualification set forth in the first sentence of this Section 3.15).
Section 3.16  **Payment of Taxes.** Each Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed by it and has paid or caused to be paid when due all Taxes required to have been paid by it, except and solely to the extent that, in each case (a) such Taxes are being contested in good faith by appropriate proceedings or (b) the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.17  **Anti-Corruption Laws and Sanctions.** Delta has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by Delta, its Subsidiaries and, when acting in such capacity, their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Delta and its Subsidiaries are in compliance in all material respects with Anti-Corruption Laws and applicable Sanctions. None of Delta, any of its Subsidiaries or to the knowledge of Delta any of their respective directors or officers is a Sanctioned Person. No Loan Party will, nor will any Loan Party permit any of its Subsidiaries to use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Borrowing for the purpose of funding, financing or facilitating any activities, business or transactions of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent licensed by OFAC or otherwise authorized under U.S. law.

Section 3.18  **Schedule of the SkyMiles Agreements; Sole Intercompany Agreement.** Schedule 3.18 sets forth the name of each SkyMiles Agreement and each Material SkyMiles Agreement as of the Closing Date. After giving effect to any agreements, licenses or sublicenses terminated or cancelled on the Closing Date, other than the Intercompany Agreements, the Delta Intercompany Note, the Deeds of Undertaking, the Management Agreement and the IP Agreements provided to the Administrative Agent prior to the Closing Date, no Loan Party is party to any material agreement, license or sublicense with any other Loan Party governing the SkyMiles Program.

Section 3.19  **Representations Regarding the SkyMiles Agreements.** With respect to each SkyMiles Agreement as of the Closing Date and on the initial date that an agreement is designated as a “SkyMiles Agreement” on Schedule 3.18 (solely in respect of such SkyMiles Agreement) pursuant to Section 5.16(i):
(a) each Loan Party that is a party to such SkyMiles Agreement had full legal capacity to execute and deliver such SkyMiles Agreement and (ii) such SkyMiles Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the applicable Loan Party enforceable against such Loan Party in accordance with its terms, subject to usual and customary bankruptcy, insolvency and equity limitations and (y) such SkyMiles Agreement is not subject to, or the subject of any assertions in respect of, any material litigation, dispute or offset of the applicable Loan Party or its Subsidiaries;

(b) to the knowledge of the Loan Parties, (i) no default by any party thereto exists and (ii) no party thereto is delinquent in payment of any other amounts required to be paid thereunder, in each case, that would reasonably be expected to result in a Material Adverse Effect;

(c) such SkyMiles Agreement complies with, and will not violate, any applicable law except as would not reasonably be expected to result in a Material Adverse Effect;

(d) except as disclosed to the Administrative Agent, the SkyMiles Agreements permit the Loan Parties to (i) grant a security interest therein granted to the Master Collateral Agent pursuant to the Collateral Documents and (ii) transfer such SkyMiles Agreement and the Loan Parties’ right, title and interest therein to Loyalty Co pursuant to the Contribution Agreements; and

(e) as of the Closing Date, the Collateral includes all of the rights under the contracts that generate at least 95.0% of the SkyMiles Revenues for the preceding twelve (12) calendar months.

Section 3.20 Compliance with IP Agreements. Each Loan Party is in compliance in all material respects with the terms and conditions of each IP Agreement to which they are a party as of the Closing Date.

Section 3.21 Solvency; Fraudulent Conveyance. Both immediately before and immediately after giving effect to the Borrowings on the Closing Date, the fair value of the assets (on a going concern basis) of the Loan Parties (taken as a whole) is greater than the fair value of the liabilities (including, without limitation, contingent liabilities if and to the extent required to be recorded as a liability on the financial statements of such Person in accordance with GAAP) of such Loan Party, and the Loan Parties (taken as a whole) are Solvent. No Loan Party intends to incur, or believes that it has incurred, debts beyond its ability to pay such debts as they mature in the ordinary course of business. As of the Closing Date, no Loan Party is contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, provisional liquidator, conservator, trustee or similar official in respect of such Person or any of its assets. No Grantor is transferring any Collateral with any intent to hinder, delay or defraud any of its creditors. As of the Closing Date, no liquidation or dissolution of any Loan Party is pending or, to the knowledge of any such Person, threatened. As of the Closing Date, no receivership, insolvency, bankruptcy, reorganization or other similar proceedings relative to any Loan Party is pending, or to the knowledge of any such Person, threatened.

Section 3.22 Intellectual Property.
(a) Except as would not be reasonably expected to result in a Material Adverse Effect, Delta and its Subsidiaries have taken commercially reasonable measures to protect the confidentiality of the SkyMiles Customer Data and all Trade Secrets of Delta and its Subsidiaries included in the SkyMiles Intellectual Property (and any material Trade Secrets owned by any Person to whom any Loan Party or any of its Subsidiaries has a confidentiality obligation with respect to the SkyMiles Program), as determined in their commercially reasonable business judgment. No material portion of the SkyMiles Customer Data, and no such material Trade Secrets have been disclosed by Delta and its Subsidiaries to any Person other than (i) pursuant to a written agreement restricting the disclosure and use thereof or (ii) SkyMiles Customer Data disclosed to members in the ordinary course of operating the SkyMiles Program. Except as would not be reasonably expected to result in a Material Adverse Effect, no current or former employee, contractor or consultant of Delta or its Subsidiaries or their Affiliates has any right, title or interest in or to any SkyMiles Intellectual Property. All Persons (including any current or former employees, contractors or consultants) who have developed, created, conceived or reduced to practice any material SkyMiles Intellectual Property for Delta or any of its Subsidiaries have assigned all right, title and interest in and to all such SkyMiles Intellectual Property pursuant to a valid and enforceable written contract or by operation of law.

(b) Following the contribution on the Closing Date of the SkyMiles Intellectual Property by Delta, directly or indirectly, to Loyalty Co pursuant to the Contribution Agreements, Delta and each of its subsidiaries (other than Loyalty Co) would not be able to operate the SkyMiles Program in a manner materially consistent with the operation of the SkyMiles Program on the Closing Date, or any other similar airline loyalty program (other than a Permitted Acquisition Loyalty Program or Specified Minority Owned Program), without the rights granted to Delta with respect to such SkyMiles Intellectual Property under the IP Licenses.

Section 3.23 Privacy and Data Security.

(a) Except as would not be reasonably expected to result in a Material Adverse Effect, each applicable Loan Party maintains commercially reasonable privacy and data security policies. Except as would not be reasonably expected to result in a Material Adverse Effect, during the five (5) year period preceding the date hereof, each applicable Loan Party and each of its Subsidiaries and each of its Third Party Processors have been and, as of the date hereof, is in compliance with (i) all internal privacy policies and privacy policies contained on any websites maintained by or on behalf of each such Loan Party or such Subsidiary, and such policies are consistent with the actual practices of such entity, (ii) all Data Protection Laws with respect to Personal Data, including Data Protection Laws anywhere in the United States, the State of California, the Cayman Islands, the United Kingdom and the European Union and (iii) its contractual commitments and obligations regarding Personal Data.

(b) Except as would not be reasonably expected to result in a Material Adverse Effect, the consummation of the transactions contemplated by this Agreement will not cause any Loan Party to be in violation or breach of any policy of any Loan Party, law of the United States or European Union or contractual agreement to which any Loan Party is a party, in each case with respect to Personal Data.
SECTION 4.

CONDITIONS OF LENDING

Section 4.01 Conditions Precedent to Closing. This Agreement shall become effective on the date on which the following conditions precedent shall have been satisfied (or waived by the Lenders in accordance with Section 10.08 and by the Administrative Agent):

(a) Supporting Documents. The Administrative Agent shall have received with respect to the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent:

(i) to the extent available in the applicable jurisdiction, a certificate of the Secretary of State of the state of such entity’s incorporation or formation (other than in respect of any entity incorporated in the Cayman Islands), dated as of a recent date, as to the good standing of that entity and as to the charter documents on file in the office of such Secretary of State and a certificate of good standing issued by the Registrar of Companies dated as of a recent date in respect of each Loan Party incorporated, registered or formed in the Cayman Islands;

(ii) a certificate of the Secretary or an Assistant Secretary (or similar officer), of such entity dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the certificate of incorporation, registration or formation and the memorandum and articles of association, by-laws or limited liability company or other operating agreement (as the case may be) (or equivalent constitutional documents) of that entity as in effect on the date of such certification, (B) that attached thereto is a true and complete copy of resolutions adopted by the board of directors, board of managers or members (or similar managing body) of that entity authorizing the Borrowings hereunder, the execution, delivery and performance in accordance with their respective terms of this Agreement, the other Loan Documents and any other documents required or contemplated hereunder or thereunder, and the granting of the Liens contemplated hereby or the other Loan Documents (in each case to the extent applicable to such entity), (C) that the certificate of incorporation, registration or formation (or equivalent constitutional documents) of that entity has not been amended since the date of the last amendment thereto indicated on the certificate of the Secretary of State furnished pursuant to clause (i) above (if applicable), and (D) as to the incumbency and specimen signature of each officer of that entity executing this Agreement and the Loan Documents or any other document delivered by it in connection herewith or therewith (such certificate to contain a certification by another officer or similar authorized person of that entity as to the incumbency and signature of the officer signing the certificate referred to in this clause (ii)); and

(iii) an Officer’s Certificate from each Loan Party certifying (A) as to the accuracy in all material respects of the representations and warranties made by it contained in the Loan Documents as though made on the Closing Date, except to the extent that any such representation or warranty by its terms is made as of a different specified date, in which case as of such date (provided that any representation or warranty that is qualified by materiality, “Material Adverse Change” or “Material Adverse Effect” shall be true and correct in all respects as of the applicable date, before and after giving effect to the Transactions), (B) as to the absence of any Early Amortization Event or an Event of Default occurring and continuing on the Closing Date before and after giving effect to the Transactions and (C) such other matters as agreed between the Borrowers and the Administrative Agent.
(b) **Term Loan Credit Agreement.** Each party hereto (including each Borrower and each Guarantor) shall have duly executed and delivered to the Administrative Agent this Agreement.

(c) **Security Agreements.** The Loan Parties shall have duly executed and delivered to the Administrative Agent the Security Agreement, the Cayman Share Mortgage and each of the IP Security Agreements, in each case in form and substance reasonably acceptable to the Administrative Agent and all financing statements in form and substance reasonably acceptable to the Administrative Agent, as may be required to grant an enforceable security interest in the applicable Collateral (subject to the terms hereof and of the other Loan Documents) in accordance with the UCC as enacted in all relevant jurisdictions, together with certificates, if any, representing the pledged Equity Interests accompanied by undated stock powers executed in blank to the extent required by the Security Agreement.

(d) **Collateral Agency and Accounts Agreement.** The Borrowers, the Collateral Administrator, the Depositary and the Master Collateral Agent shall have executed the Collateral Agency and Accounts Agreement.

(e) **Opinions of Counsel.** The Administrative Agent, the Lenders, the Collateral Administrator and the Master Collateral Agent shall have received each of the following, dated as of the Closing Date, and in form and substance reasonably satisfactory to the Administrative Agent, the Lenders, the Collateral Administrator and the Master Collateral Agent:

(i) a customary written opinion of David Cartee, Associate General Counsel for Delta;

(ii) a customary written opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, including a true contribution opinion and a non-conflict with contractual obligations opinion;

(iii) a customary written opinion of Dorsey & Whitney LLP, special Delaware counsel to the Loan Parties;

(iv) a customary written opinion of Walkers, special Cayman Islands counsel to the Secured Parties, including as to non-consolidation of Loyalty Co, HoldCo 1, HoldCo 2, HoldCo 3 and Delta;

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(v) a customary written opinion of Maples and Calder, special Cayman Islands counsel to the Loan Parties; and
(vi) a customary written opinion of Kilpatrick Townsend & Stockton LLP, special New York counsel to the Loan Parties.

(f) **Account Control Agreements.** The Administrative Agent shall have received fully executed copies of the Account Control Agreement with respect to the Collection Account.

(g) **Payment of Fees and Expenses.** The Borrowers shall have paid to the Agents, the Lead Arrangers and the Lenders the then unpaid balance of all accrued and unpaid Fees due, owing and payable under and pursuant to this Agreement, as referred to in Sections 2.19, and all reasonable and documented out-of-pocket expenses of the Administrative Agent (including reasonable attorneys’ fees of Milbank LLP and Walkers) and the Collateral Administrator, the Master Collateral Agent and the Depositary (including reasonable attorneys’ fees of Smith, Gambrell & Russell, LLP) for which invoices have been presented at least two (2) Business Days prior to the Closing Date, or the Borrowers shall have authorized that such fees and expenses be deducted from the proceeds of the initial funding under the Term Loans.

(h) **Lien Searches.** The Administrative Agent shall have received copies of (i) UCC, tax and judgment lien searches, in each case as of a recent date that name Loyalty Co and the other SPV Parties (under their current and any previous names used within the last five years) and in such offices and the states (or other jurisdictions) of formation of such Persons or in which the chief executive office of each such Person is located together with copies of the financing statements (or similar documents) disclosed by such search, and (ii) lien searches of the United States Patent and Trademark Office and United States Copyright Office in respect of the SkyMiles Intellectual Property transferred by Delta pursuant to the Contribution Agreements on the Closing Date, in each case of (i) and (ii) accompanied by evidence reasonably satisfactory to the Administrative Agent that the Liens indicated in any such financing statement (or similar document) are in respect of a Permitted Lien.

(i) [Reserved].

(j) **Representations and Warranties.** All representations and warranties of the Loan Parties contained in this Agreement and the other Loan Documents executed and delivered on the date hereof or on the Closing Date shall be true and correct in all material respects on and as of the Closing Date, before and after giving effect to the Transactions, as though made on and as of such date (except to the extent any such representation or warranty by its terms is made as of a different specified date, in which case as of such specified date); provided that any representation or warranty that is qualified by materiality, “Material Adverse Change” or “Material Adverse Effect” shall be true and correct in all respects, as though made on and as of the applicable date, before and after giving effect to the Transactions.
(k) **No Early Amortization Event or Event of Default.** Before and after giving effect to the Transactions, no Early Amortization Event or Event of Default shall have occurred and be continuing on the Closing Date.

(l) **Patriot Act.** The Lenders shall have received at least three (3) days prior to the Closing Date all documentation and other information, including a Beneficial Ownership Certification, required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act, that such Lenders shall have requested from any Loan Party at least ten (10) days prior to the Closing Date.

(m) **Solvency Certificate.** The Administrative Agent shall have received a certificate of the chief financial officer or treasurer (or other comparable officer) of Delta certifying that the Loan Parties (taken as a whole) are, and will be immediately after giving effect to the Facility, Solvent.

(n) **Direction of Payment.** Delta shall provide confirmation that a Direction of Payment has been delivered to a sufficient number of counterparties under SkyMiles Agreements to cause at least 90% of the SkyMiles Revenues to be directly deposited into the Collection Account.

(o) **Contribution Agreements.** The Borrowers shall provide copies of executed agreements evidencing the transfer of (i) all of Delta’s rights, title and interest in and to the SkyMiles Intellectual Property that it owns or purports to own (excluding the Composite Marks and the Specified Intellectual Property) to Loyalty Co, (ii) all of Delta’s rights to establish, create, organize, initiate, participate, operate, assist, benefit from, promote or otherwise be involved in or associated with, in any capacity, the SkyMiles Program or any other customer loyalty miles program or any similar customer loyalty program to Loyalty Co (other than with respect to a Specified Minority Owned Program or a Permitted Acquisition Loyalty Program), and (iii) all of Delta’s rights, title and interest in, to and under the SkyMiles Agreements (other than the Intercompany Agreements), in each case, pursuant to Contribution Agreements in form and substance reasonably satisfactory to the Administrative Agent.

(p) **Other Transaction Documents.** The Administrative Agent shall have received a copy of each other Transaction Document duly executed and delivered by each of the parties thereto.

(q) **Ratings.** The Loan Parties shall have obtained ratings for the Initial Term Loans from two (2) Rating Agencies (which Rating Agencies are acceptable to the Lead Arrangers in their sole discretion).

The execution by each Lender of this Agreement shall be deemed to be confirmation by such Lender that any condition relating to such Lender’s satisfaction or reasonable satisfaction with any documentation set forth in this **Section 4.01** has been satisfied as to such Lender.
Section 4.02 Conditions Precedent to Each Loan. The obligation of the Lenders to make any Term Loans, including the Term Loans to be made on the Closing Date, is subject to the satisfaction (or waiver in accordance with Section 10.08) of the following conditions precedent:

(a) Notice. The Administrative Agent shall have received a Loan Request pursuant to Section 2.03 with respect to such Borrowing.

(b) Representations and Warranties. All representations and warranties of the Loan Parties contained in this Agreement and the other Loan Documents to which it is a party shall be true and correct in all material respects on and as of the date such Term Loan is made, before and after giving effect to Borrowing of such Term Loan, as though made on and as of such date (except to the extent any such representation or warranty by its terms is made as of a different specified date, in which case as of such specified date); provided that any representation or warranty that is qualified by materiality, “Material Adverse Change” or “Material Adverse Effect” shall be true and correct in all respects, as though made on and as of the applicable date, before and after giving effect to Borrowing of such Term Loan.

(c) No Early Amortization Event or Event of Default. Before and after giving effect to the Borrowing of such Term Loan on a pro forma basis, no Early Amortization Event or Event of Default shall have occurred and be continuing on the date such Term Loan is made.

The acceptance by the Borrowers of each extension of credit hereunder shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Section 4.02 have been satisfied at that time.

Section 4.03 Conditions Subsequent.

(a) Any assignment, pursuant to a Contribution Agreement, of SkyMiles Intellectual Property registered in the United States shall be filed in the applicable intellectual property office on or before the date that is thirty (30) days after the Closing Date (as extendable automatically for not more than thirty (30) days without further consent to the extent the Borrowers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Borrowers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree. Any assignment, pursuant to a Contribution Agreement, of SkyMiles Intellectual Property registered outside the United States shall be filed in the applicable intellectual property office on or before the date that is one hundred and eighty (180) days after the Closing Date (as extended automatically without further consent to the extent the Borrowers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of applicable law or the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Borrowers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree.
On or before the Closing Date, Delta shall segregate, compile and host, and thereafter Delta shall maintain, current and future SkyMiles Customer Data in a database (the “SkyMiles Customer Database”) separate from the database containing any data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or any of its Subsidiaries (other than the SkyMiles Customer Data); provided that Dated SkyMiles Member Profile Data may be commingled with other data owned or purported to be owned, or later developed or acquired and owned or purported to be owned, by Delta or any of its Subsidiaries that is held in an archival format (such commingled Dated SkyMiles Member Profile Data, “Archived SkyMiles Member Profile Data”); and further provided that Delta shall not be required to remove or segregate any Delta Traveler Related Data contained in the SkyMiles Customer Database. Any Archived SkyMiles Member Profile Data shall continue to be subject to the security interest granted under the Collateral Documents. The SkyMiles Customer Database shall be property of Loyalty Co and subject to the lien granted under the Collateral Documents.

With respect to Composite Marks registered in the United States, Delta shall, on or before the date that is thirty (30) days after the Closing Date (as extended automatically for not more than thirty (30) days without further consent to the extent the Borrowers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Borrowers); provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree, make the necessary filings with the applicable intellectual property office to expressly cancel (or the equivalent) such registrations. With respect to Composite Marks registered in jurisdictions outside the United States, Delta shall, on or before the date that is one hundred and eighty (180) days after Closing Date (as extended automatically without further consent to the extent the Borrowers are diligently pursuing satisfaction of the terms hereof, but such completion has been delayed as a result of applicable law or the COVID-19 pandemic or other similar events and conditions (e.g., natural disaster), which are outside the control of the Borrowers), make the necessary filings with the applicable intellectual property office to expressly cancel (or the equivalent) such registrations; provided that such period may be extended to a later date as the Master Collateral Agent (acting at the direction of the Collateral Controlling Party) may agree.

SECTION 5.
AFFIRMATIVE COVENANTS

From the date hereof and for so long as the Term Loan Commitments remain in effect, the principal of or interest on any Term Loan is owing (or any other amount that is due and unpaid on the first date that none of the foregoing is in effect, outstanding or owing, respectively, is owing) to any Lender or the Administrative Agent hereunder:

Section 5.01 Financial Statements, Reports, Etc. The Borrowers shall deliver to the Administrative Agent on behalf of the Lenders:
(a) Within (i) ninety (90) days after the end of each fiscal year, Delta’s consolidated balance sheet and related statement of income and cash flows, showing the financial condition of Delta and its Subsidiaries on a consolidated basis as of the close of such fiscal year and the results of their respective operations during such year, the consolidated statement of Delta to be audited for Delta by independent public accountants of recognized national standing and to be accompanied by an opinion of such accountants (which opinion shall be without a “going concern” or like qualification or exception and without any more qualification or exception as to the scope of such audit, except for any such qualification solely as a result of (x) an impending debt maturity within twelve (12) months of the Term Loans or (y) a potential inability to satisfy any financial covenant) to the effect that such consolidated financial statements fairly present in all material respects the financial condition and results of operations of Delta and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that the foregoing delivery requirement shall be satisfied if Delta shall have filed with the SEC its Annual Report on Form 10-K for such fiscal year, via EDGAR or any similar successor system and (ii) one hundred eighty (180) days after the end of the fiscal year ending December 31, 2020, and within one hundred twenty (120) days after the end of each fiscal year thereafter, the financial statements of HoldCo 1 and its Subsidiaries on a consolidated basis (including cash flows) to be audited for Delta by independent public accountants of recognized national standing and to be accompanied by an opinion of such accountants (which opinion shall be without a “going concern” or like qualification or exception and without any more qualification or exception as to the scope of such audit, except for any such qualification solely as a result of (x) an impending debt maturity within twelve (12) months of the Term Loans or (y) a potential inability to satisfy any financial covenant) to the effect that such financial statements fairly present in all material respects the financial condition and results of operations of HoldCo 1 and its Subsidiaries on a consolidated basis in accordance with GAAP;

(b) Within (i) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year, Delta’s consolidated balance sheets and related statements of income and cash flows, showing the financial condition of Delta and its Subsidiaries on a consolidated basis as of the close of such fiscal quarter and the results of their operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Responsible Officer of Delta as fairly presenting in all material respects the financial condition and results of operations of Delta and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year end audit adjustments and the absence of footnotes; provided that the foregoing delivery requirement shall be satisfied if Delta shall have filed with the SEC its Quarterly Report on Form 10-Q for such fiscal quarter, via EDGAR or any similar successor system and (ii) sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year beginning on January 1, 2021, financial statements (including cash flows) of HoldCo 1 and its Subsidiaries on a consolidated basis as of the close of such fiscal quarter and the results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Responsible Officer of Delta as fairly presenting in all material respects the financial condition and results of operations of HoldCo 1 and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year end audit adjustments and the absence of footnotes;

(c) Within the time period under Section 5.01(a) above with respect to Delta, a certificate of a Responsible Officer of Delta certifying that, to the knowledge of such Responsible Officer, no Early Amortization Event or Event of Default has occurred and is continuing, or, if, to the knowledge of such Responsible Officer, such an Early Amortization Event or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;
On or prior to each Determination Date, a certificate of a Responsible Officer demonstrating in reasonable detail compliance with (i) Section 5.20 as of the last day of the preceding Quarterly Reporting Period and (ii) the Peak Debt Service Coverage Ratio Test as of the last day of the preceding Quarterly Reporting Period;

(c) [Reserved];

(f) [Reserved];

(g) Promptly upon knowledge thereof by a Responsible Officer of a Borrower, give to the Administrative Agent notice in writing of any Default, Early Amortization Event or Event of Default;

(h) Promptly after a Responsible Officer of Delta obtains knowledge of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party that could reasonably be expected to result in a Material Adverse Effect, notification thereof; and

(i) Subject to any confidentiality restrictions under binding agreements or limitations imposed by applicable law, a notice posted on a password protected website to which the Administrative Agent will have access (or otherwise deliver to the Administrative Agent, including, without limitation, by electronic mail) of (i) any material amendment, restatement, supplement, waiver or other modification to any Material SkyMiles Agreement promptly (but in no case within thirty (30) days) upon the effectiveness of such amendment, restatement, supplement, waiver or other modification and (ii) any termination, cancellation or expiration received or delivered by a Loan Party with respect to a Material SkyMiles Agreement.

In no event shall the Administrative Agent be entitled to inspect, receive and make copies of materials, (i) except in connection with any enforcement or exercise of remedies, (A) that constitute non-registered SkyMiles Intellectual Property, non-financial Trade Secrets (including the SkyMiles Customer Data) or non-financial proprietary information, or (B) in respect of which disclosure to the Administrative Agent, any Collateral Agent or any Lender (or their respective representatives or contractors) is prohibited by law or any binding agreement (or would otherwise cause a breach or default thereunder) or (ii) that are subject to attorney client or similar privilege or constitute attorney work product or constitute Excluded Intellectual Property. The Borrowers agree to provide copies of any notices or any deliverables given or received under the Collateral Agency and Accounts Agreement to the Administrative Agent, including any notice or deliverable required to be provided to the Senior Secured Debt Representatives.

Subject to the next succeeding sentence, information delivered pursuant to this Section 5.01 to the Administrative Agent may be made available by the Administrative Agent to the Lenders by posting such information on the Syndtrak website on the Internet at http://syndtrak.com. Information required to be delivered pursuant to this Section 5.01 by any Loan Party shall be delivered pursuant to Section 10.01 hereeto. Information required to be delivered pursuant to this Section 5.01 (to the extent not made available as set forth above) shall be deemed to have been delivered to the Administrative Agent on the date on which Loyalty Co provides written notice to the Administrative Agent that such information has been posted on Delta’s general commercial website on the Internet (to the extent such information has been posted or is available as described in such notice), as such website may be specified by Loyalty Co to the Administrative Agent from time to time. Information required to be delivered pursuant to this Section 5.01 shall be in a format which is suitable for transmission.
Any notice or other communication delivered pursuant to this Section 5.01, or otherwise pursuant to this Agreement, shall be deemed to contain material non-public information unless (i) expressly marked by a Loan Party as “PUBLIC”, (ii) such notice or communication consists of copies of any Loan Party’s public filings with the SEC or (iii) such notice or communication has been posted on Delta’s general commercial website on the Internet, as such website may be specified by Loyalty Co to the Administrative Agent from time to time.

Delivery of reports, information and documents to the Collateral Administrator is for informational purposes only, and its receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including any Loan Party’s or any other Person’s compliance with any of its covenants under this Agreement or any other Loan Document. The Collateral Administrator shall have no liability or responsibility for the content, filing or timeliness of any report or other information delivered, filed or posted under or in connection with this Agreement, the other Loan Documents or the transactions contemplated hereunder or thereunder. For the avoidance of doubt, the Collateral Administrator shall have no duty to monitor or access any website of a Loan Party or any other Person referenced herein, shall not have any duty to monitor, determine or inquire as to compliance or performance by any Loan Party or any other Person of its obligations under this Section 5.01 or otherwise and the Collateral Administrator shall not be responsible or liable for any Loan Party’s or any other Person’s non-performance or non-compliance with such obligations.

Section 5.02 Taxes. Each Loan Party shall pay and discharge promptly all taxes, assessments, governmental charges, levies or claims imposed upon it or upon its income or profits or in respect of its property, before the same shall become more than ninety (90) days delinquent, except in each case where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; provided, however, that each Loan Party shall not be required to pay and discharge or to cause to be paid and discharged any such obligation, tax, assessment, charge, levy or claim so long as (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings and (ii) each Loan Party shall have set aside on their books adequate reserves therefor in accordance with GAAP.

Section 5.03 [Reserved].

Section 5.04 Corporate Existence. Each Loan Party shall preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except (a) if such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and (b) as otherwise permitted in connection with (i) sales of assets not restricted by Section 6.04 or (ii) mergers, liquidations and dissolutions permitted by Section 6.10.
Section 5.05  **Compliance with Laws.** Each Loan Party shall comply, and cause each of its Subsidiary Guarantors to comply, with all applicable laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Delta will maintain in effect policies and procedures reasonably designed to promote compliance by Delta, its Subsidiaries and, when acting in such capacity, their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.06  **Contribution of SkyMiles Intellectual Property.** Delta shall contribute Intellectual Property and data to Loyalty Co pursuant to the Contribution Agreements from time to time so that at all times Delta and its Subsidiaries (other than Loyalty Co) would not be able to operate the SkyMiles Program in a manner materially consistent with the operation of the SkyMiles Program at such time, or any other similar airline loyalty program (other than a Permitted Acquisition Loyalty Program or Specified Minority Owned Program), without the rights granted to Delta with respect to such SkyMiles Intellectual Property under the IP Licenses.

Section 5.07  **Special Purpose Entity.** Other than as required or permitted by the Transaction Documents or the SkyMiles Agreements, the SPV Parties have not and shall not:

(a) engage in any business or activity other than (i) the purchase, receipt, management and sale of Collateral and Excluded Property; provided that in no event shall any SPV Party purchase, receive, manage or sell real property, (ii) the transfer and pledge of Collateral pursuant to the terms of the Collateral Documents and the Priority Lien Debt Documents and the Junior Lien Debt Documents, (iii) the entry into and the performance under the Transaction Documents and SkyMiles Agreements to which it is a party and (iv) such other activities as are incidental thereto;

(b) acquire or own any material assets other than (i) the Collateral and Excluded Property; provided that in no event shall any SPV Party acquire or own real property, or (ii) incidental property as may be necessary or desirable for the operation of any SPV Party and the performance of its obligations under the Transaction Documents and SkyMiles Agreements to which it is a party and the Priority Lien Debt Documents and the Junior Lien Debt Documents;

(c) except as permitted by this Agreement (i) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets, or (ii) change its legal structure, or jurisdiction of incorporation, unless, in connection with any of the foregoing, such action shall result in the substantially contemporaneous occurrence of the Discharge of Senior Secured Debt Obligations;
(d) except as otherwise permitted under Section 5.07(c), fail to preserve its existence as an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(e) form, acquire or own any Subsidiary, own any Equity Interests in any other entity, or make any Investment in any Person other than to the extent permitted in its memorandum and articles;

(f) except as contemplated in the Senior Secured Debt Documents, commingle its assets with the assets of any of its Affiliates, or of any other Person;

(g) incur any Indebtedness other than (i) Indebtedness to the Secured Parties hereunder or in conjunction with a repayment of all or a portion of the Term Loans owed to the Lenders and a termination of all the Term Loan Commitments, (ii) any other Priority Lien Debt, (iii) any Junior Lien Debt and (iv) ordinary course contingent obligations under or any terms thereof related to the SkyMiles Agreements (such as customary indemnities to fronting banks, administrative agents, collateral agents, depository banks, escrow agents, etc.);

(h) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due in the ordinary course of business;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of any other Person;

(j) enter into any contract or agreement with any Person, except (i) the Transaction Documents to which it is a party and the Priority Lien Debt Documents and the Junior Lien Debt Documents, (ii) organizational documents, (iii) SkyMiles Agreements or other co-branding, partnering or similar agreements, (iv) agreements between any SPV Party and Delta and/or its Subsidiaries substantially consistent with Delta’s arrangements with its other Subsidiaries that (I) terminate upon such SPV Party ceasing to be a Subsidiary of Delta, (II) do not involve the payment of cash to or from such SPV Party, (III) are entered into for the primary purpose of managing the transfer and processing of data among the parties thereto and (IV) contain non-petition and nonrecourse covenants with respect to such SPV Party consistent with the provisions set forth in this Agreement, (v) intercompany agreements for loans from Loyalty Co to Delta permitted under Section 6.01, (vi) other contracts or agreements that (x) are upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm’s length basis with third parties other than such Person, (y) contain non-petition covenants with respect to such SPV Party consistent with the provisions set forth in this Agreement and (z) contain nonrecourse covenants with respect to such SPV Party consistent with the provisions set forth in this Agreement;
seek its dissolution or winding up in whole or in part;

fail to use commercially reasonable efforts to correct promptly any material known misunderstandings regarding the separate identities of any SPV Party, on the one hand, and any Affiliate or any principal thereof or any other Person, on the other hand;

except pursuant to the Transaction Documents and SkyMiles Agreements, the Priority Lien Debt Documents and the Junior Lien Debt Documents guarantee, become obligated for, or hold itself out to be responsible for the Indebtedness of another Person;

fail, in any material respect, either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business, solely in its own name in order not (i) to mislead others as to the identity of the Person with which such other party is transacting business, or (ii) to suggest that it is responsible for the Indebtedness of any third party (including any of its principals or Affiliates (other than as contemplated or required pursuant to the Transaction Documents or SkyMiles Agreements));

fail, to the extent of its own funds (taking into account the requirements in the Transaction Documents and SkyMiles Agreements), to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

[reserved];

fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; provided that the SPV Parties’ assets may be included in a consolidated financial statement of its Affiliates so long as (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the SPV Parties from such Person and to indicate that the SPV Parties’ assets and credit are not available to satisfy the Indebtedness and other obligations of such Person or any other Person except for Indebtedness incurred and other obligations pursuant to the Loan Documents, the Priority Lien Debt Documents and the Junior Lien Debt Documents and (ii) such assets shall also be listed on the SPV Parties’ own separate balance sheet (in each case, subject to clause (v) below);

fail to pay its own separate liabilities and expenses only out of its own funds (other than as contemplated under any Director Services Agreement);

maintain, hire or employ any individuals as employees;

acquire the obligations or securities issued by its Affiliates or members (other than (i) any equity interests of another SPV Party that is a Subsidiary of such SPV Party or (ii) intercompany loans permitted under Section 6.01);

fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

pledge its assets to secure the obligations of any other Person other than pursuant to the Loan Documents, the Priority Lien Debt Documents and the Junior Lien Debt Documents;
(w) fail to have such Independent Directors as are required pursuant Section 5.08;

(x) (i) institute proceedings to be adjudicated bankrupt or insolvent, (ii) institute or consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) seek or consent to the appointment of a receiver, liquidator, provisional liquidator, assignee, trustee, sequestrator, collateral agent or any similar official for any SPV Party, (v) make any general assignment for the benefit of any SPV Party’s creditors, (vi) admit in writing its inability to pay its debts generally as they become due, or (vii) take any corporate action to approve any of the foregoing; or

(y) fail to file its own tax returns separate from those of any other Person, except to the extent that any SPV Party is treated as a disregarded entity for U.S. federal and applicable state and local income tax purposes.

Section 5.08 SPV Party Independent Directors. No SPV Party shall fail for five (5) consecutive Business Days to have the Required Number of Independent Directors (or 30 days in the case of such Independent Director’s death, disability or resignation, provided that in the case of Loyalty Co, one Independent Director remains at Loyalty Co during such period). Each SPV Party agrees that no vote for a “Material Action” (as defined in the constitutional documents of such SPV Party) shall be held unless such SPV Party has the Required Number of Independent Directors at such time, all Required Number of Independent Directors are present for such vote and the affirmatively vote of all Independent Directors is required for such SPV Party to take such “Material Action.”

Section 5.09 Regulatory Matters; Citizenship; Utilization; Collateral Requirements. Delta will:

(a) maintain at all times its status as an “air carrier” within the meaning of Section 40102(a)(2) of Title 49, and hold a certificate under Section 41102(a)(1) of Title 49;

(b) be a United States Citizen; and

(c) maintain at all times its status at the FAA as an “air carrier” and hold an air carrier operating certificate under Section 44705 of Title 49 and operations specifications issued by the FAA pursuant to Parts 119 and 121 of Title 14 as currently in effect or as may be amended or recodified from time to time.

Section 5.10 Collateral Ownership. Subject to the provisions described (including the actions permitted) under Section 6 hereof, each Grantor will continue to maintain its interest in and right to use all property and assets so long as such property and assets constitute Collateral, except as would not reasonably be expected to result in a Material Adverse Effect.

Section 5.11 [Reserved].
Section 5.12 Guarantors; Grantors; Collateral.

(a) Delta shall take, and cause each Guarantor to take, such actions as are necessary in order to ensure that the obligations of the Loan Parties hereunder and under the other Loan Documents are guaranteed by all Guarantors.

(b) Delta and Loyalty Co shall, in each case at their own expense, (A) cause HoldCo 3 to become a Grantor and to become a party to each applicable Collateral Document and all other agreements, instruments or documents that create or purport to create and perfect a first priority Lien (subject to Permitted Liens) in favor of the Master Collateral Agent for the benefit of the Secured Parties in substantially all of its assets (other than Excluded Property), subject to and in accordance with the terms, conditions and provisions of the Loan Documents (it being understood that only Loyalty Co and HoldCo 3 shall be required to become Grantors and pledge their respective Collateral), (B) promptly execute and deliver (or cause such Grantor to execute and deliver) to the Administrative Agent and the Collateral Administrator such documents and take such actions to create, grant, establish, preserve and perfect the applicable priority Liens (subject to Permitted Liens) (including to obtain any release or termination of Liens not permitted under Section 6.06 and the filing of UCC financing statements, as applicable) in favor of the Master Collateral Agent for the benefit of the Secured Parties on such assets of any Grantor to secure the Obligations to the extent required under the applicable Collateral Documents or reasonably requested by the Administrative Agent or the Master Collateral Agent, and to ensure that such Collateral shall be subject to no other Liens other than Permitted Liens and (C) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent, for the benefit of the Secured Parties, the Master Collateral Agent, the Collateral Administrator and the Depositary, a customary written opinion of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) to such Grantor, as applicable, with respect to the matters described in clauses (A) and (B) hereof, in each case within twenty (20) Business Days after the addition of such Collateral.

Section 5.13 Access to Books and Records.

(a) The Borrowers shall maintain or cause to be maintained at all times true and complete books and records in all material respects in a manner consistent with GAAP in all material respects of the financial operations of the Borrowers and provide the Administrative Agent, Master Collateral Agent and their respective representatives and advisors reasonable access to all such books and records (subject to requirements under any confidentiality agreements, if applicable, and excluding the SkyMiles Agreements), as well as any appraisals of the Collateral, during regular business hours, in order that the Administrative Agent and the Master Collateral Agent may upon reasonable prior notice and with reasonable frequency, but in any event, so long as no Event of Default has occurred and is continuing, no more than one (1) time per year, examine and make abstracts from such books, accounts, records, appraisals and other papers, and permit the Administrative Agent, the Master Collateral Agent and their respective representatives and advisors to confer with the officers of Delta and representatives (provided that Delta shall be given the right to participate in such discussions with such representatives) of Delta, all for the purpose of verifying the accuracy of the various reports delivered by the Borrowers to the Administrative Agent or the Lenders pursuant to this Agreement or for otherwise ascertaining compliance with this Agreement. All confidential or proprietary information obtained in connection with any such visit, inspection or discussion shall be held confidential by the Administrative Agent, the Master Collateral Agent and each agent or representative thereof and shall not be furnished or disclosed by any of them to anyone other than their respective bank examiners, auditors, accountants, agents and legal counsel, and except as may be required by any court or administrative agency or by any statute, rule, regulation or order of any Governmental Authority. None of Delta or any of its Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter pursuant to this Section 5.13, (i) except in connection with any enforcement or exercise of remedies, (A) that constitutes non-registered SkyMiles Intellectual Property, non-financial Trade Secrets (including the SkyMiles Customer Data) or non-financial proprietary information, including the SkyMiles Agreements, or (B) in respect of which disclosure to Administrative Agent or any Lender (or their respective designees or representatives) is prohibited by law or any binding agreement (or would otherwise cause a breach or default thereunder), or (ii) that is subject to attorney-client or similar privilege or constitutes attorney work product or constitutes Excluded Intellectual Property.
Section 5.14 Further Assurances.

(a) In each case, subject to the terms, conditions and limitations in the Loan Documents, each Loan Party shall execute any and all further documents and instruments, and take all further actions, that may be required or advisable under applicable law or that the Master Collateral Agent may reasonably request, in order to create, grant, establish, preserve, protect and perfect the validity, perfection and priority of the Liens and security interests created or intended to be created by the Collateral Documents, in each case to the extent required under this Agreement or the Collateral Documents.

(b) [Reserved.]

c) Promptly after the date upon which it is permissible to transfer and assign any Specified Intellectual Property, the Loan Parties shall, if such Specified Intellectual Property is not transferred and assigned pursuant to an existing Contribution Agreement, execute and deliver one or more Contribution Agreements together with all further documents and instruments that may be required and advisable, and take all further actions that may be required or advisable under applicable law or that the Master Collateral Agent may reasonably request, to transfer and assign all of the Loan Parties’ right, title and interest in and to such Specified Intellectual Property to Loyalty Co, and shall promptly provide the Administrative Agent and the Master Collateral Agent copies of any such documents.

Section 5.15 Maintenance of Rating. The Loan Parties shall use commercially reasonable efforts to cause the Term Loans to be continuously rated (but not any specific rating) by the two (2) Rating Agencies that initially rated the Term Loans. The Loan Parties shall make commercially reasonable efforts to provide such Rating Agencies (at Delta’s sole expense) such reports, records and documents as each shall reasonably request to monitor or affirm such ratings, except to the extent the disclosure of any such document or any such discussion would result in the violation of any Loan Party’s contractual (including all confidentiality obligations set forth in the SkyMiles Agreements) or legal obligations; provided that the Loan Parties’ failure to obtain such a rating after using commercially reasonable efforts shall not constitute an Event of Default.
Section 5.16  **SkyMiles Program; SkyMiles Agreements.**

(a) The Loan Parties (as applicable) agree to honor Miles according to the policies and procedure of the SkyMiles Program except to the extent that would not reasonably be expected to cause a Payment Material Adverse Effect.

(b) Each Loan Party shall take any action permitted under the SkyMiles Agreements and applicable law that it, in its reasonable business judgment, determines is advisable, in order to diligently and promptly (i) enforce its rights and any remedies available to it under the SkyMiles Agreements, (ii) perform its obligations under the SkyMiles Agreements and (iii) cause the applicable counterparties to perform their obligations under the related SkyMiles Agreements, including such counterparties’ obligations to make payments to and indemnify the applicable Loan Parties in accordance with the terms thereof in each case except to the extent that would not reasonably be expected to cause a Payment Material Adverse Effect.

(c) Neither Delta nor Loyalty Co shall substantially reduce the SkyMiles Program business or modify the terms of the SkyMiles Program in any manner that would reasonably be expected to cause a Payment Material Adverse Effect.

(d) Delta shall not and shall not permit any of its Subsidiaries to change the policies and procedures of the SkyMiles Program in any manner that would reasonably be expected to cause a Payment Material Adverse Effect.

(e) Delta shall not and shall not permit any of its Subsidiaries to establish, create, or operate any Loyalty Program, other than a Permitted Acquisition Loyalty Program or a Specified Minority Owned Program, unless substantially all such Loyalty Program cash revenues (which excludes, for the avoidance of doubt, airline revenues such as ticket sales and baggage fees), accounts in which such cash revenue is deposited, Intellectual Property and member data (but solely to the extent that such Intellectual Property and member data would be included in the definition of SkyMiles Intellectual Property, substituting references to the SkyMiles Program with references to such other Loyalty Program), and material third-party contracts and intercompany agreements, related to such Loyalty Program are transferred and held at Loyalty Co or a subsidiary thereof and pledged as Collateral on a first lien basis (except to the extent such revenues and assets constitute Excluded Property), subject to third party rights and Permitted Liens; provided that, for the avoidance of doubt, nothing shall prohibit Delta or any of its Subsidiaries from offering and providing discounts or other incentives (other than any Currency) for travel or carriage on Delta.

(f) The Loan Parties agree that, with respect to each SkyMiles Agreement entered into after the Closing Date (i) Loyalty Co shall be party to such SkyMiles Agreement and (ii) such SkyMiles Agreement shall (x) provide that payment made by the counterparty thereunder shall be made to Loyalty Co and deposited directly into the Collection Account and (y) permit Loyalty Co to grant a Lien on such SkyMiles Agreement to secure the Obligations.
(g) Notwithstanding anything to the contrary, with respect to any Permitted Acquisition Loyalty Program, each Loan Party shall be permitted to undertake any of the following actions at any time after such actions are permitted under the Material SkyMiles Agreements and applicable law:

(i) terminate the Permitted Acquisition Loyalty Program;

(ii) merge and consolidate the Permitted Acquisition Loyalty Program into the SkyMiles Program; or

(iii) cause the Permitted Acquisition Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees) to be pledged as Collateral.

(h) For the avoidance of doubt, (i) until it is merged into or consolidated with the SkyMiles Program, any Permitted Acquisition Loyalty Program shall not be deemed part of the SkyMiles Program, its co-branding, partnering or similar agreements shall not constitute SkyMiles Agreements, and its customer data shall not constitute SkyMiles Customer Data and (ii) following a merger or consolidation of the Permitted Acquisition Loyalty Program into the SkyMiles Program, (A) none of the restrictions described in the definition of “Permitted Acquisition Loyalty Program” will continue to apply to the merged program, (B) the co-branding, partnering or similar agreements related to or entered into in connection with the Permitted Acquisition Loyalty Program shall become SkyMiles Agreements and (C) all rights, title and interest therein and the Permitted Acquisition Loyalty Program’s cash revenues (which excludes airline revenues such as ticket sales and baggage fees) must be promptly pledged as Collateral.

(i) The Loan Parties agree that if, as of any Determination Date, the aggregate amount of cash revenues attributable to the Retained Agreements for the preceding four Quarterly Reporting Periods (or, in the case of the first three Quarterly Reporting Periods, since the Closing Date) are greater than or equal to 5.0% of the SkyMiles Revenues for such period, (i) Delta shall promptly transfer (or cause to be transferred) its rights, title and interest in, to and under one or more Retained Agreements to Loyalty Co such that the aggregate amount of cash revenues produced by the Retained Agreements not so transferred is less than 5.0% of the SkyMiles Revenues in such period (on a pro forma basis) and shall deliver updates to Schedule 3.18 to list such transferred agreement(s) as SkyMiles Agreement(s) and (ii) upon the effectiveness of such transfer, such Retained Agreement(s) shall become SkyMiles Agreement(s).

(j) Loyalty Co shall have the exclusive right to issue Miles in connection with the SkyMiles Program, including any Miles purchased by Delta, SkyMiles members or any other third parties pursuant to SkyMiles Agreements, Retained Agreements, Delta Air Line Business Agreements or otherwise from Loyalty Co, Delta or any of its Affiliates, and neither Delta nor any of its Affiliates (other than Loyalty Co) shall engage in such activities. Delta shall purchase Miles from Loyalty Co in order to comply with its obligations under the SkyMiles Agreements, the Retained Agreements and the Delta Air Line Business Agreements. Loyalty Co shall issue Miles purchased by Delta in accordance with the Intercompany Agreements.
Section 5.19 Collections; Releases from Collection Account.

(a) Delta and Loyalty Co shall instruct and use commercially reasonable efforts to cause sufficient counterparties to SkyMiles Agreements to direct payments of Transaction Revenue into the Collection Account such that in any Quarterly Reporting Period, at least 90% of SkyMiles Revenues are deposited directly into the Collection Account.

(b) To the extent any Loan Party or any of their controlled Affiliates receives any payments of Transaction Revenues to an account other than the Collection Account, such Person shall cause such amounts to be deposited into the Collection Account within three (3) Business Days after receipt and identification thereof.

(c) Delta and HoldCo 3 shall make, and Loyalty Co shall ensure that, all payments payable to Loyalty Co pursuant to the Intercompany Agreements and the IP Licenses are made directly into the Collection Account.

Section 5.20 Minimum Liquidity. Delta shall not, at the close of any Business Day, permit the sum of (i) the aggregate amount of Unrestricted Cash and (ii) the aggregate principal amount committed and available to be drawn by Delta under all revolving credit facilities of Delta to be less than $2,000,000,000.

Section 5.21 Mandatory Prepayments. To the extent not applied in accordance with Section 2.12, the Borrowers shall cause an amount equal to the Net Proceeds from all transactions that result in mandatory prepayments pursuant to the terms of Section 2.12 to be deposited promptly into the Collection Account, which amounts shall be applied in accordance with the terms of Section 2.12.

Section 5.22 Privacy and Data Security. Except as would not reasonably be expected to result in a Material Adverse Effect, each applicable Loan Party shall maintain in effect commercially reasonable privacy and data security policies. Without limiting the generality of the foregoing, except as would not reasonably be expected to result in a Material Adverse Effect, each applicable Loan Party shall comply in all material respects, and shall cause each of its Subsidiaries and each of its Third Party Processors to be in compliance in all material respects, with (i) all internal privacy policies and privacy policies contained on any websites maintained by or on behalf of each such Loan Party or such Subsidiary and such policies are consistent with the actual practices of such entity, (ii) all Data Protection Laws with respect to Personal Data, including Data Protection Laws anywhere in the United States, the State of California, the Cayman Islands, the United Kingdom and the European Union and (iii) its contractual commitments and obligations regarding Personal Data.
SECTION 6.
NEGATIVE COVENANTS

From the date hereof and for so long as the Term Loan Commitments remain in effect or principal of or interest on any Term Loan is owing (or any other amount that is due and unpaid on the first date that none of the foregoing is in effect, outstanding or owing, respectively, is owing) to any Lender or the Administrative Agent hereunder:

Section 6.01 Restricted Payments.

(a) The SPV Parties shall not, directly or indirectly:

(i) declare or pay any dividend or make any other payment or distribution on account of any SPV Party’s Equity Interests (including, without limitation, any payment in connection with any merger or consolidation) or to the direct or indirect holders of any SPV Party’s Equity Interests in their capacity as such;

(ii) purchase, redeem or otherwise acquire or retire for value any Equity Interests of any SPV Party; or

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness other than the Priority Lien Debt; or

(iv) make any Restricted Investment,

(all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as “Restricted Payments”), other than solely with respect to:

(1) Restricted Payments (including the making of any intercompany loans, any payments in respect of intercompany debt or Junior Lien Debt or any payments with respect to Indebtedness in the nature of an “AHYDO catch up” payment with respect to any Indebtedness that constitutes an applicable high yield discount obligation) with amounts released to Loyalty Co under Section 2.10(b)(xi) of this Agreement or pursuant to Section 2.11 of the Collateral Agency and Accounts Agreement; and

(2) (i) the distribution of the proceeds of the Term Loans and the notes under the Indenture from Loyalty Co to HoldCo 3, (ii) the subsequent distribution of the proceeds of the Term Loans and the notes under the Indenture from HoldCo 3 to HoldCo 2, and (iii) the making of the Delta Intercompany Loan, in each case, on the Closing Date;

provided that notwithstanding anything to the contrary in this Agreement, other than funds released to Loyalty Co pursuant to clause (vi) of the priority of payments in Section 7.01, no SPV Party shall be permitted to make any Restricted Payment at any time when an Event of Default has occurred and is continuing.
Section 6.02 Incurrence of Indebtedness and Issuance of Preferred Stock. The SPV Parties shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect any Indebtedness other than the following (and Delta shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect any Indebtedness with respect to any Pre-paid Miles Purchase other than as set forth in clause (b) below):

(a) Junior Lien Debt; provided that (i) prior to the incurrence of such Junior Lien Debt, the Rating Agency Condition shall have been satisfied, (ii) no Event of Default or Early Amortization Event shall have occurred and be continuing or would result from the issuance of such Junior Lien Debt, (iii) to the extent that immediately after giving effect to the issuance of such Junior Lien Debt the aggregate outstanding amount of Junior Lien Debt would exceed $1.0 billion, the ratio of (A) (I) the aggregate outstanding amount of Junior Lien Debt (including such Junior Lien Debt being then issued) plus (II) the greater of (x) the then outstanding principal amount of Priority Lien Debt and (y) the Priority Lien Cap divided by (B) the sum of (x) the aggregate amount of Transaction Revenue received during the period of four consecutive Quarterly Reporting Periods ending on the most recent Determination Date, and (y) funds transferred to the Collection Account pursuant to Section 2.24 in connection with such Determination Date shall not exceed 1.60 to 1.00 on a pro forma basis and (iv) such Junior Lien Debt shall not be incurred by or subject to a guarantee by any Subsidiary of Delta other than any SPV Party;

(b) Pre-paid Miles Purchases, so long as (i) the aggregate amount of Miles purchased in Pre-paid Miles Purchases or other Indebtedness incurred with respect to Pre-paid Miles Purchases does not exceed an amount equal to the result of (x) $550.0 million divided by (y) the rate by which such Person purchases Miles from Delta as of the Closing Date, (ii) such sale is non-refundable and non-recourse to the SPV Parties, (iii) the Indebtedness related thereto is unsecured or secured by assets of Delta or its subsidiaries (other than the SPV Parties) that do not constitute Collateral and (iv) no Early Amortization Period or Event of Default is continuing at the time of such sale or would result therefrom;
(c) Indebtedness under this Agreement and Qualifying Note Debt and any Indebtedness issued in a Capital Markets Offering by the Borrowers; provided that (i) any such Indebtedness (other than with respect to clauses (A) and (B), customary bridge loans which, subject only to customary conditions (which shall be limited to no payment or bankruptcy event of default) would either automatically be converted into or required to be exchanged for long-term refinancing in the form of Incremental Term Loans permitted under (and subject to the requirements of) Section 2.27, Replacement Term Loans permitted under (and subject to the requirements of) Section 10.08 or Priority Lien Debt permitted under (and subject to the requirements of) this Section 6.02(c)), (A) shall have a maturity date not earlier than the Latest Maturity Date then in effect, (B) shall have a Weighted Average Life to Maturity thereof no shorter than the remaining Weighted Average Life to Maturity of the existing Term Loans or notes outstanding pursuant to this clause (c), and (C) shall not be subject to or benefit from any Guarantee by any Person other than a Loan Party, (ii) after giving effect to such Indebtedness, the outstanding principal amount of the Priority Lien Debt shall not exceed the Priority Lien Cap (plus, fees, expenses, premium and accrued interest in respect of any Indebtedness incurred pursuant to this Section 6.02(c) which refinances other Indebtedness of Loyalty Co permitted hereunder), (iii) prior to the issuance of any additional Indebtedness issued in a Capital Markets Offering after the initial issuance, the Rating Agency Condition shall have been satisfied, and (iv) in the case of the issuance of any additional Indebtedness issued in a Capital Markets Offering after the initial issuance, the terms and conditions governing such Indebtedness shall (x) be reasonably acceptable to the Administrative Agent or (y) be substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by Loyalty Co) to the investors or holders providing such Indebtedness than those applicable to the then-outstanding Term Loans (except to the extent such terms are (I) conformed (or added) in the Loan Documents for the benefit of the Lenders holding then-outstanding Term Loans pursuant to an amendment hereto or thereto subject solely to the reasonable satisfaction of Loyalty Co and the Administrative Agent or (II) applicable solely to periods after the latest final maturity date of the Term Loans existing at the time of such incurrence) and (D) shall be issued pursuant to a single indenture (or one or more substantially similar indentures) for all such Indebtedness under this Section 6.02(c); provided that notwithstanding the foregoing, in no event shall such Indebtedness be subject to events of default resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the then-outstanding Term Loans, (v) no Event of Default or Early Amortization Event shall have occurred and be continuing or would result from the issuance of such Indebtedness and (vi) other than in the case of the notes issued on the Closing Date, the pro forma Peak Debt Service Coverage Ratio (calculated using the Maximum Quarterly Debt Service of the then existing Term Loans and notes and such Indebtedness) as of the immediately preceding Determination Date, immediately after giving effect to the issuance of such Indebtedness shall be more than (i) for any date of determination prior to the Determination Date occurring in July 2022, 1.50 to 1:00, (ii) for any date of determination during the period beginning on or after the Determination Date occurring in July 2022 but excluding the Determination Date occurring in January 2023, 1.75 to 1:00 and (iii) for any date of determination occurring on or after the Determination Date in January 2023, 2.25 to 1:00;

(d) Indebtedness arising from customary indemnification or other similar obligations under the Loan Documents and the other agreements entered into on the Closing Date in connection therewith (or replacements or amendments thereto which are permitted under this Agreement); and

(e) Indebtedness otherwise permitted under Section 6.06.

Section 6.03 [Reserved].

Section 6.04 Disposition of Collateral. No Loan Party shall sell or otherwise Dispose of any Collateral (or, in the case of any SPV Party, any of its property or assets (including the Collateral)), including by way of any Sale of a Grantor, except for (i) a Permitted Disposition, (ii) Permitted Pre-paid Miles Purchases in an aggregate amount not to exceed $550.0 million, and (iii) any other sale or Disposition (other than a Sale of a Grantor) of asset having a Fair Market Value in an aggregate amount not to exceed $25 million in any fiscal year; provided that, for the avoidance of doubt, it is acknowledged and agreed that Delta is not a Grantor hereunder.
Section 6.05 [Reserved].

Section 6.06 Liens. No Loan Party will directly or indirectly create, incur, assume or suffer to exist any Lien of any kind on any property or asset that constitutes Collateral or any Equity Interests in any SPV Party, in each case other than Permitted Liens; provided that, for the avoidance of doubt, it is acknowledged and agreed that Delta is not a Grantor hereunder. No SPV Party will directly or indirectly create, incur, assume or suffer to exist any Lien of any kind on any of its property or assets (including the Collateral) other than Permitted Liens.

Section 6.07 Business Activities. The SPV Parties shall not engage in any business other than Permitted Businesses.

Section 6.08 [Reserved].

Section 6.09 [Reserved].

Section 6.10 Merger, Consolidation, or Sale of Assets.

(a) Delta shall not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) unless:

1. immediately after giving effect thereto no Early Amortization Event, Default or Event of Default shall have occurred and be continuing;

2. Delta is the surviving corporation or, if otherwise, (x) such other Person or continuing corporation (the “Successor Company”) shall (A) be an “air carrier” within the meaning of Section 40102(a)(2) of Title 49, and hold a certificate under Section 41102(a)(1) of Title 49; (B) be a United States Citizen; (C) be an air carrier and hold an air carrier operating certificate and other operating authorizations issued by the FAA pursuant to 14 C.F.R. Parts 119 and 121 as currently in effect or as may be amended or recodified from time to time; and (D) except as specifically permitted herein or in the Collateral Documents, possess all necessary certificates, exemptions, franchises, licenses, permits, designations, rights, concessions, authorizations, frequencies and consents which are material to the conduct of its business and operations as currently conducted, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and
in the case of a Successor Company, the Successor Company shall (A) execute, prior to or contemporaneously with the consummation of such transaction, such agreements, if any, as are in the reasonable opinion of the Administrative Agent, necessary to evidence the assumption by the Successor Company of liability for all of the obligations of Delta hereunder and under the other Loan Documents and (B) cause to be delivered to the Administrative Agent and the Lenders such legal opinions (which may be from in-house counsel) as any of them may reasonably request in connection with the matters specified in the preceding clause (A) and (C) provide such information as each Lender or the Administrative Agent reasonably requests in order to perform its “know your customer” due diligence with respect to the Successor Company.

Upon any consolidation or merger in accordance with this Section 6.10(a) in any case in which Delta is not the surviving corporation, the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, Delta under this Agreement with the same effect as if such Successor Company had been named as “Delta” herein. No such consolidation or merger shall have the effect of releasing Delta or any Successor Company which theretofore shall have become a successor to Delta in the manner prescribed in this Section 6.10(a) from its liability with respect to any Loan Document to which it is a party.

(b) Delta shall not liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution).

(c) No SPV Party shall: (i) consolidate or merge with or into another Person, or permit any other Person to merge into or consolidate with it, or (ii) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of its properties, in one or more related transactions, to another Person.

Section 6.11 [Reserved]

Section 6.12 Direction of Payment. No Loan Party shall revoke, or permit to be revoked, any Direction of Payment.

Section 6.13 IP Agreements. The Loan Parties shall not terminate, amend, waive, supplement or otherwise modify any IP Agreement or any provision thereof or exercise any right or remedy under or pursuant to or under any IP Agreement, in each case, without the prior written consent of the Required Lenders if such termination, amendment, waiver, supplement or modification or exercise of remedies would reasonably be expected to result in a Material Adverse Effect; provided that (i) termination of any IP Agreement or any amendment to the termination provisions thereof, or (ii) any amendment to an IP Agreement that (A) materially and adversely affects rights to the SkyMiles Intellectual Property or rights to use SkyMiles Intellectual Property or in the case of the Contribution Agreements, rights to or rights to use other applicable Collateral, (B) shortens the scheduled term thereof, (C) in the case of any IP License, materially and adversely changes the amount or calculation of the termination payment, or the amount, calculation or rate of fees due and owing thereunder, (D) changes the contractual subordination of payments thereunder in a manner materially adverse to the Lenders, (E) reduces the frequency of payments thereunder to an SPV Party or permits payments due to an SPV Party thereunder to be deposited to an account other than the Collection Account, (F) changes the amendment standards applicable to such IP Agreement (other than changes affecting rights of the Administrative Agent or the Master Collateral Agent to consent to amendments, which is covered by clause (G)) in a manner that would reasonably be expected to result in a Material Adverse Effect or (G) materially impairs the rights of the Administrative Agent or the Master Collateral Agent to enforce or consent to amendments to any provisions thereof in accordance therewith shall, in each case, be deemed to have a Material Adverse Effect.
Section 6.14 Specified Organization Documents. No Loan Party shall amend, modify or waive any SPV Provision of any Specified Organization Document. No Loan Party shall amend, modify or waive any other provision of any Specified Organization Document in a manner materially adverse to the Lenders.

SECTION 7.

EVENTS OF DEFAULT AND EARLY AMORTIZATION EVENTS

Section 7.01 Events of Default. In the case of the occurrence of any of the following events and the continuance thereof beyond the applicable grace period if any (each, an “Event of Default”):

(a) any representation or warranty made by any Loan Party in this Agreement or in any other Loan Document shall prove to have been false or incorrect in any material respect when made, and such representation or warranty, to the extent capable of being corrected, is not corrected within 30 days after the earlier of (A) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such default or (B) receipt by a Borrower of notice from the Administrative Agent of such default; or

(b) default shall be made in the payment of (i) any principal amount or premium of the Term Loans when and as the same shall become due and payable; (ii) any interest on the Term Loans and such default shall continue unremedied for more than 5 Business Days; or (iii) any other amount payable hereunder when due and such default shall continue unremedied for more than 10 Business Days after the earlier of (A) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such default or (B) receipt by a Borrower of notice from the Administrative Agent of such default; it being understood that if any default shall be made by any Loan Party in the due observance or performance of the covenants set in Section 5 shall not constitute a default subject to this Section 7.01(b); or

(c) default shall be made by any Loan Party in the due observance of (i) the covenants in Section 5.19, 5.20 or 5.21 and (ii) the covenant in Section 6.14 and such default shall continue unremedied for more than, in the cause of clause (i), 10 Business Days, and in the case of clause (ii), 20 Business Days, after the earlier of (A) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such default or (B) receipt by Delta or Loyalty Co of notice from the Administrative Agent of such default; or
default shall be made by any Loan Party in the due observance or performance of any other covenant, condition or agreement to be observed or performed by it pursuant to the terms of this Agreement or any of the other Loan Documents and such default shall continue unremedied or uncured for more than 30 days (or 135 days in the case of Section 5.16(c) and (d)) after the earlier of (i) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such default or (ii) receipt by Delta or Loyalty Co of notice from the Administrative Agent of such default; provided that, if such Person is proceeding with diligence and good faith to cure or remedy such default and such default is susceptible to cure or remedy, such 30 day (or 135 days in the case of Section 5.16(c) and (d)) period shall be extended as may be necessary to cure such failure, such extended period not to exceed 90 days (or 150 days in the case of Section 5.16(c) and (d)) in the aggregate (inclusive of the original 30 day period (or the original 135 day period in the case of Section 5.16(c) and (d))); or

(c) (i) any material provision of any Loan Document to which a Loan Party is a party ceases to be a valid and binding obligation of such Loan Party, or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Loan Document, (ii) the Lien on any material portion of the Collateral intended to be created by the Collateral Documents shall cease to be or shall not be a valid and perfected (to the extent required hereunder or under such Collateral Documents) Lien having the priorities contemplated thereby (subject to Permitted Liens and except as permitted by the terms of this Agreement or the Collateral Documents or as a result of the action, delay or inaction of the Administrative Agent) or (iii) the guaranty in Section 9 hereof shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of such guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of such guaranty, or any Guarantor shall deny that it has any further liability under such guaranty; provided that, in each case, unless any Loan Party shall have contested or challenged, other than good faith disputes regarding interpretation of contractual provisions, the validity, perfection or priority of, or attempted to invalidate, such liens or the validity or enforceability of a material provision of any Loan Document or material portion of any Collateral or guaranty document, such breach shall not be an Event of Default unless such breach continues unremedied or uncured for more than 30 Business Days after the earlier of (x) a Responsible Officer of a Delta or Loyalty Co obtaining knowledge of such default or (y) receipt by Borrowers of written notice from the Administrative Agent of such default; or

(f) any SPV Party:

(i) commences a voluntary case or procedure,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors,
admits in writing its inability generally to, pay its debts as they become due, or
proposes or passes a resolution for its voluntary winding up or liquidation; or
a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  (i) is for relief against any SPV Party;
  (ii) appoints a receiver, trustee, liquidator, provisional liquidator, custodian, conservator or other similar official of any SPV Party or for all or substantially all of the property of any SPV Party;
  (iii) commences proceedings for a compromise or arrangement with any SPV Party's creditors (or class or classes of creditors), or
  (iv) orders the liquidation of any SPV Party;
and in each case the order or decree remains unstayed and in effect for 60 consecutive days; or

failure by any Loan Party to pay one or more final judgments entered by a court or courts of competent jurisdiction aggregating in excess of $200 million (determined net of amounts covered by insurance policies issued by creditworthy insurance companies or by third party indemnities or a combination thereof), which judgments are not paid, discharged, bonded, vacated satisfied or stayed for a period of sixty (60) days; or

(i) Delta shall default in the performance of any obligation relating to Material Indebtedness and any applicable grace periods shall have expired and any applicable notice requirements shall have been complied with, and as a result of such default the holder or holders of such Material Indebtedness or any trustee or agent on behalf of such holder or holders shall have caused such Material Indebtedness to become due prior to its scheduled final maturity date or (ii) Delta shall default in the payment of the outstanding principal amount due on the scheduled final maturity date of any Indebtedness outstanding under one or more agreements, any applicable grace periods shall have expired and such failure to make payment when due shall be continuing for a period of more than five (5) consecutive Business Days following the applicable scheduled final maturity date thereunder, in an aggregate principal amount at any time unpaid exceeding $200 million; provided that such payment default or acceleration resulting from any bankruptcy, insolvency or similar events with respect to Delta shall not constitute a default under this Section 7.01(i); provided, further, that if any such default shall be waived or cured (as evidenced by a writing from the applicable holder, agent or trustee) then, to the extent of such waiver or cure, the Event of Default hereunder by reason of such default shall be deemed likewise to have been thereupon waived or cured; or
(j) any SPV Party shall default in the performance of any obligation relating to Material Indebtedness and any applicable grace periods shall have expired and any applicable notice requirements shall have been complied with, and as a result of such default the holder or holders of such Material Indebtedness or any trustee or agent on behalf of such holder or holders shall have caused, or shall be entitled or permit or have the right to cause, such Material Indebtedness to become due prior to its scheduled final maturity date or (ii) any SPV Party shall default in the payment of the outstanding principal amount due on the scheduled final maturity date of any Indebtedness outstanding under one or more agreements of such SPV Party, any applicable grace periods shall have expired following the applicable scheduled final maturity date thereunder, in an aggregate principal amount at any time unpaid exceeding $200 million; provided, further, that if any such default shall be waived or cured (as evidenced by a writing from the applicable holder, agent or trustee) then, to the extent of such waiver or cure, the Event of Default hereunder by reason of such default shall be deemed likewise to have been thereupon waived or cured; or

(k) a termination of a Plan of any Loan Party pursuant to Section 4042 of ERISA that would reasonably be expected to result in a

Material Adverse Effect; or

(l) (i) an exit from, or a termination or cancellation of, the SkyMiles Program or (ii) any termination, expiration or cancellation of (1) an Intercompany Agreement, (2) the Delta Intercompany Loan, (3) a Material SkyMiles Agreement for which, solely in the case of clause (3), (other than an Intercompany Agreement) a Permitted Replacement SkyMiles Agreement is not entered into as of the effective date of such termination, expiration or cancellation; or

(m) any Loan Party makes a Material Modification to a Material SkyMiles Agreement or the Delta Intercompany Loan without the prior written consent of the Master Collateral Agent (acting at the direction of the Required Debtholders); or

(n) any termination or cancellation of any IP License; or

(o) after the occurrence of a Parent Bankruptcy Event, any of the Delta Case Milestones shall cease to be met or complied with, as applicable; or

(p) a SPV Party Change of Control; or

(q) (i) failure of any SPV Party to maintain at least the Required Number of Independent Directors for more than five (5) consecutive Business Days (or 30 days in the case of such Independent Director’s death, disability or resignation, provided that in the case of Loyalty Co, one Independent Director remains at Loyalty Co during such period), (ii) the removal of any Independent Director of any SPV Party without “cause” (as such term is defined in the organizational or constitutional documents of such SPV Party) or without giving prior written notice to the Administrative Agent, each as required in the organizational or constitutional documents of the related entity, or (iii) an Independent Director of any SPV Party that is not an Approved Independent Director shall be appointed without the consent of the Administrative Agent;
then, and in every such event and at any time thereafter during the continuance of such event, the Administrative Agent shall, at the request of the Required Lenders, by written notice to the Borrowers (with a copy to the Master Collateral Agent and the Collateral Administrator), take one or more of the following actions, at the same or different times:

A. terminate forthwith the Term Loan Commitments;

B. declare the Term Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of the Term Loans and other Obligations and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document to the contrary notwithstanding;

C. [Reserved];

D. set-off amounts in any accounts (other than accounts pledged to secure other Indebtedness of any Loan Party, Escrow Accounts, Payroll Accounts or other accounts held in trust for an identified beneficiary maintained with the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or the Depositary (or any of their respective affiliates) and apply such amounts to the obligations of the Loan Parties hereunder and in the other Loan Documents; and

E. subject to the terms of the Loan Documents, exercise any and all remedies under the Loan Documents and under applicable law available to the Administrative Agent, the Collateral Administrator, the Master Collateral Agent and the Lenders.

In case of any event described in clause (f), (g) or (o) of this Section 7.01, the actions and events described in clauses (A), (B) and (C) above shall be required or taken automatically, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties. Subject to the terms of the Collateral Agency and Accounts Agreement, after the occurrence and during the continuance of any Event of Default, any Available Funds and other amounts received, including any amounts realized upon enforcement of any Collateral Documents or any payments, recoveries or distributions received in any proceeding under any Bankruptcy Laws including adequate protection and Chapter 11 plan distributions, to the extent received by the Collateral Administrator from the Master Collateral Agent as the Term Loans’ Pro Rata Share thereof shall be applied by the Collateral Administrator as follows:

(i) first, (x) ratably, to (i) the Depositary and the Master Collateral Agent, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to such Agents pursuant to the terms of the Loan Documents and (ii) the Collateral Administrator, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Collateral Administrator pursuant to the terms of the Loan Documents, and then (y) to the Administrative Agent, the amount of Fees, costs, expenses, reimbursements and indemnification amounts due and payable to the Administrative Agent pursuant to the terms of the Loan Documents and then (z) ratably, the Term Loans’ Pro Rata Share of fees, expenses and other amounts due and owing to any Independent Director of any SPV Party (to the extent not otherwise paid);
(ii) *second*, to the Administrative Agent, on behalf of the Lenders, any due and unpaid interest on the Term Loans;

(iii) *third*, to the Administrative Agent, on behalf of the Lenders in an amount equal to the amount necessary to pay the outstanding principal balance of the Term Loans in full;

(iv) *fourth*, to pay to the Administrative Agent on behalf of the Lenders, any additional Obligations then due and payable, including any Premium;

(v) *fifth*, until all Priority Lien Debt is paid in full, to the Master Collateral Agent to be maintained in the Collection Account or distributed in accordance with the Collateral Agency and Accounts Agreement; and

(vi) *sixth*, all remaining amounts shall be released to or at the direction of Loyalty Co.

Section 7.02 Early Amortization Event. In the case of the happening of any Early Amortization Event, the Administrative Agent may, and at the direction of the Required Lenders shall, by notice to the Borrowers, provide written notice to the Borrowers that an Early Amortization Event has occurred.

SECTION 8.

THE AGENTS

Section 8.01 Administration by Agents.

(a) Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints the Master Collateral Agent to act on its behalf as the Master Collateral Agent hereunder and under the Collateral Documents and authorizes the Master Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Master Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints the Collateral Administrator to act on its behalf as the Collateral Administrator hereunder and authorizes the Collateral Administrator to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Administrator by the terms hereof, together with such actions and powers as are reasonably incidental thereto. The Collateral Administrator shall be the Senior Secured Debt Representative (as defined in the Collateral Agency and Accounts Agreement) on behalf of the Lenders and the other Secured Parties. For any Act of Required Debtholders under the Collateral Agency and Accounts Agreement, the Collateral Administrator shall take instruction from the Administrative Agent (on behalf of the Required Lenders) hereunder (which such instruction shall include a certification by the Administrative Agent as to the aggregate principal amount of the Term Loans represented by such instruction).
Each of the Lenders hereby authorizes the Administrative Agent, the Collateral Administrator and the Master Collateral Agent, as applicable, and in their sole discretion:

(i) to execute (or direct the execution of) any documents or instruments or take any other actions reasonably requested by the Loan Parties to release a Lien granted to the Master Collateral Agent, for the benefit of the Secured Parties, on any asset that is part of the Collateral of the Loan Parties (A) upon the payment in full of all Obligations (except for contingent obligations in respect of which a claim has not yet been made), (B) that is sold or to be sold or transferred as part of or in connection with any sale or other transfer permitted by the terms of this Agreement or under any other Loan Document to a Person that is not a Loan Party, (C) as to the extent provided in the Collateral Documents, or (D) if approved, authorized or ratified in writing in accordance with Section 10.08;

(ii) to determine that the cost to either Borrower or any other Grantor, as the case may be, is disproportionate to the benefit to be realized by the Secured Parties by perfecting a Lien in a given asset or group of assets included in the Collateral and that such Borrower or such other Grantor, as the case may be, should not be required to perfect such Lien in favor of the Master Collateral Agent, for the benefit of the Secured Parties;

(iii) to enter into the other Loan Documents on terms acceptable to the Administrative Agent, the Collateral Administrator and the Master Collateral Agent and to perform its respective obligations thereunder;

(iv) [reserved];

(v) to enter into (or direct the entrance into) any Intercreditor Agreement or intercreditor and/or subordination agreements in accordance herewith, including Section 6.06, on terms reasonably acceptable to the Administrative Agent, and in each case to perform its obligations thereunder and to take such action and to exercise the powers, rights and remedies granted to it thereunder and with respect thereto; and

(vi) to enter into (or direct the entrance into) any other agreements reasonably satisfactory to the Administrative Agent granting Liens to the Master Collateral Agent, for the benefit of the Secured Parties, on any assets of Loyalty Co or any other Grantor to secure the Obligations.
(c) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or prospective Lender is a Disqualified Lender or (ii) have any liability with respect to or arising out of any assignment of Term Loans, or disclosure of confidential information to any Disqualified Lenders.

(d) Concurrently herewith, the Administrative Agent directs the Master Collateral Agent and the Master Collateral Agent is authorized to enter into the Collateral Documents and any other related agreements in the form delivered to the Master Collateral Agent. For the avoidance of doubt, all of the Master Collateral Agent’s rights, protections and immunities provided herein shall apply to the Master Collateral Agent for any actions taken or omitted to be taken under the Collateral Documents and any other related agreements in such capacity.

Section 8.02 Rights of Administrative Agent and the Other Agents. Any institution serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its respective Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate of Delta as if it were not an Agent hereunder. The rights, privileges, protections, indemnities, immunities and benefits given to the Collateral Administrator are extended to, and shall be enforceable by, (i) the Collateral Administrator in each Loan Document and each other document related hereto to which it is a party and (ii) the entity acting as the Collateral Administrator in each of its capacities hereunder and under the other Loan Documents and any related document whether or not specifically set forth therein.

Section 8.03 Liability of Agents.

(a) No Agent shall have any duties or obligations except those expressly set forth herein and in any other applicable Loan Document. Without limiting the generality of the foregoing, (i) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether an Early Amortization Event or an Event of Default has occurred and is continuing, (ii) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.08), (iii) except as expressly set forth herein, no Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of Delta’s Subsidiaries that is communicated to or obtained by the institution serving as an Agent or any of its Affiliates in any capacity and (iv) no Agent will be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt, any action that may be in violation of the automatic stay under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect. No Agent shall be liable for any action taken or not taken by it with the consent of, or at the request of (i) the Collateral Administrator in each Loan Document and each other document related hereto to which it is a party and (ii) the entity acting as the Collateral Administrator or the Master Collateral Agent, the Administrative Agent, or (B) in the absence of its own gross negligence or willful misconduct. Neither the Administrative Agent, the Collateral Administrator nor the Master Collateral Agent shall be deemed to have knowledge of any Early Amortization Event, Event of Default or Default unless and until written notice thereof is given to the Administrative Agent, the Collateral Administrator or the Master Collateral Agent, respectively, by, in the case of the Administrative Agent or the Collateral Administrator, any Borrower or a Lender or, in the case of the Master Collateral Agent, the Administrative Agent, and neither Administrative Agent, the Collateral Administrator nor the Master Collateral Agent shall be responsible for, or have any duty to ascertain or inquire into, (A) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (B) the contents of any certificate, report or other document delivered hereunder or in connection herewith or in connection with any other Loan Document, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document or related document, (D) the validity, enforceability, effectiveness, value, sufficiency or genuineness of this Agreement or any other agreement, instrument or document or any Collateral or security interest, or (E) the satisfaction of any condition set forth in Section 4 or elsewhere herein or in any other Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.
Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for Delta or the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through its Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of any Agent and any such sub-agent, and shall apply to their respective activities as such Agent. Neither the Master Collateral Agent nor the Collateral Administrator shall be responsible for the acts or omissions of any such sub-agent appointed with due care.

The following additional rights and protections shall be applicable to the Master Collateral Agent and the Collateral Administrator in connection with this Agreement, the other Loan Documents and any related document:

Neither the Master Collateral Agent nor the Collateral Administrator shall have any liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts.
(ii) Nothing in this Agreement or any other Loan Document shall require the Master Collateral Agent or the Collateral Administrator to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

(iii) Neither the Master Collateral Agent nor the Collateral Administrator shall be under any obligation to exercise any of the rights or powers vested in it by this Agreement or any other Loan Document at the request or direction of the Administrative Agent or the Lenders, unless such Person shall have offered to the Master Collateral Agent or the Collateral Administrator, as applicable, security or indemnity (satisfactory to the Master Collateral Agent or the Collateral Administrator, as applicable, in its sole and absolute discretion) against the costs, expenses and liabilities which may be incurred by it in compliance with such request or direction.

(iv) Notwithstanding anything to the contrary herein or in any other Transaction Document, neither the Collateral Administrator nor the Master Collateral Agent shall be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Agreement and any other Loan Document to which it is a party, whether or not an original or a copy of such agreement has been provided to the Collateral Administrator or the Master Collateral Agent, as applicable, and shall not be subject to, or bound by, the terms and provisions of any documents to which it is not a party.

(v) In the event that any Collateral shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Collateral, each of the Master Collateral Agent and the Collateral Administrator is hereby expressly authorized, each in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Master Collateral Agent or the Collateral Administrator obeys or complies with any such writ, order or decree it shall not be liable to any of the Loan Parties or to any other Person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(vi) The Master Collateral Agent and the Collateral Administrator shall be entitled to request and receive written instructions from the Administrative Agent and shall have no responsibility or liability to the Lenders for any losses or damages of any nature that may arise from any action taken or not taken by the Master Collateral Agent or the Collateral Administrator in accordance with the written direction of the Administrative Agent.
(vii) The Master Collateral Agent and the Collateral Administrator may request, rely on and act in accordance with Officer’s Certificates and/or opinions of counsel, and shall incur no liability and shall be fully protected in acting or refraining from acting in accordance with such Officer’s Certificates and opinions of counsel.

(viii) If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Agreement or any other Loan Document, or the Master Collateral Agent or the Collateral Administrator is in doubt as to the action to be taken hereunder, the Master Collateral Agent or the Collateral Administrator may, at its option, after sending written notice of the same to the Administrative Agent, refuse to act until such time as it (a) receives a final non-appealable order of a court of competent jurisdiction directing delivery of the Collateral or otherwise regarding such matter or (b) receives a written instruction, executed by each of the parties involved in such disagreement or dispute, in a form reasonably acceptable to the Master Collateral Agent or the Collateral Administrator, as applicable, directing delivery of the Collateral or otherwise regarding such matter. The Master Collateral Agent and the Collateral Administrator will be entitled to act on any such written instruction or final, non-appealable order of a court of competent jurisdiction without further question, inquiry or consent. The Master Collateral Agent and the Collateral Administrator may file an interpleader action in a state or federal court, and upon the filing thereof, the Master Collateral Agent or the Collateral Administrator will be relieved of all liability as to the Collateral and will be entitled to recover reasonable and documented out-of-pocket attorneys’ fees, expenses and other costs incurred in commencing and maintaining any such interpleader action.

(ix) Neither the Collateral Administrator nor the Master Collateral Agent shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics, pandemics or similar health crises; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(x) Neither the Master Collateral Agent nor Collateral Administrator shall have any obligation to give, execute, deliver, file, record, authorize or obtain any financing statements, notices, instruments, documents, agreements, consents or other papers as shall be necessary to (i) create, preserve, perfect or validate the security interest granted to the Master Collateral Agent or the Collateral Administrator pursuant to this Agreement or any other Loan Document or any related document or (ii) enable the Master Collateral Agent or the Collateral Administrator to exercise and enforce its rights under this Agreement or any other Loan Document or any related document with respect to such pledge and security interest.
For purposes of clarity, but without limiting any rights, protections, immunities or indemnities afforded to the Master Collateral Agent or the Collateral Administrator hereunder (including without limitation in this Section 8) and under the other Loan Documents, phrases such as “satisfactory to the Master Collateral Agent or the Collateral Administrator,” “approved by the Master Collateral Agent or the Collateral Administrator,” “acceptable to the Master Collateral Agent or the Collateral Administrator,” “as determined by the Master Collateral Agent or the Collateral Administrator,” “in the Master Collateral Agent’s or the Collateral Administrator’s discretion,” “selected by the Master Collateral Agent or the Collateral Administrator,” “elected by the Master Collateral Agent or the Collateral Administrator,” “requested by the Master Collateral Agent or the Collateral Administrator,” and phrases of similar import that authorize or permit the Master Collateral Agent or the Collateral Administrator to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Master Collateral Agent or the Collateral Administrator, as applicable, receiving written direction from the Administrative Agent to take such action or to exercise such rights.

(e) Anything herein to the contrary notwithstanding, the Lead Arrangers listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender.

Section 8.04 Reimbursement and Indemnification. Each Lender agrees (a) to reimburse on demand the Administrative Agent (and the Collateral Administrator, the Master Collateral Agent and the Depositary) for such Lender’s Aggregate Exposure Percentage of any expenses and fees incurred for the benefit of the Lenders under this Agreement and any of the Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, and any other expense incurred in connection with the operations or enforcement thereof, not reimbursed by the Loan Parties and (b) to indemnify and hold harmless the Administrative Agent, the Collateral Administrator and the Master Collateral Agent and any of their Related Parties, on demand, in the amount equal to such Lender’s Aggregate Exposure Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any of them in any way relating to or arising out of this Agreement or any of the Loan Documents or any action taken or omitted by it or any of them under this Agreement or any of the Loan Documents to the extent not reimbursed by the Loan Parties (except such as shall result from its own gross negligence or willful misconduct).
Section 8.05  Successor Agents.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrowers (with a copy to the Collateral Administrator and the Master Collateral Agent). Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent (provided no Event of Default has occurred and is continuing) of the Borrowers (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders with the consent of the Borrowers (such consent not to be unreasonably withheld or delayed)) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to), in consultation with the Borrowers, on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. For the avoidance of doubt, whether or not a successor Administrative Agent has been appointed, the retiring Administrative Agent’s resignation shall nonetheless become effective in accordance with such notice of resignation on the Resignation Effective Date. With effect from the Resignation Effective Date, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) except for any indemnity payments owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article 8 and Section 10.04 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 the Administrative Agent.

(b) The Collateral Administrator may at any time resign at any time upon at least 30 days’ prior written notice to the Borrowers and the Administrative Agent; provided that, no resignation of the Collateral Administrator will be permitted unless a successor Collateral Administrator has been appointed. Promptly after receipt of notice of the Collateral Administrator’s resignation, the Administrative Agent shall promptly appoint a successor Collateral Administrator (which successor Collateral Administrator shall be reasonably acceptable to the Required Lenders and, so long as no Event of Default under Section 7.01(b), (f), (g) or (o) has occurred and is continuing, the Borrowers) by written instrument, copies of which instrument shall be delivered to the Borrowers, the Master Collateral Agent, the resigning Collateral Administrator and to the successor Collateral Administrator. In the event no successor Collateral Administrator shall have been appointed within 30 days after the giving of notice of such resignation, the Collateral Administrator may petition any court of competent jurisdiction to appoint a successor Collateral Administrator. The Administrative Agent upon at least 30 days’ prior written notice to the Collateral Administrator and the Borrowers, may with or without cause remove and discharge the Collateral Administrator or any successor Collateral Administrator thereafter appointed from the performance of its duties under this Agreement. Promptly after giving notice of removal of the Collateral Administrator, the Administrative Agent shall appoint, or petition a court of competent jurisdiction to appoint, a successor Collateral Administrator (which successor Collateral Administrator shall be reasonably acceptable to the Required Lenders and, so long as no Event of Default under Section 7.01(b), (f), (g) or (o) has occurred and is continuing, the Borrowers). Any such appointment shall be accomplished by written instrument and a copy shall be delivered to the Collateral Administrator and the successor Collateral Administrator, the Borrowers and the Master Collateral Agent.
(c) The Master Collateral Agent may resign, and in any such event shall be replaced, in accordance with the terms of the Collateral Agency and Accounts Agreement.

(d) In the event that the Depositary shall no longer have the deposit rating necessary for the Payment Account and Reserve Account to be Eligible Deposit Accounts, Loyalty Co shall be permitted to and shall promptly, and in any event within 30 days (as such deadline may be extended by the Master Collateral Agent (acting at the direction of the Collateral Controlling Party)) of (A) a Responsible Officer of Delta or Loyalty Co obtaining knowledge of such ratings change or (B) receipt by a Borrower of notice from the Administrative Agent of such ratings change, move the Payment Account and the Reserve Account, as applicable, to a depository institution (i) selected by Loyalty Co that has the deposit rating necessary for the Payment Account and Reserve Account to be Eligible Deposit Accounts or (ii) that is otherwise approved by the Administrative Agent, and will cause such depository institution to execute an Account Control Agreement.

Section 8.06 Independent Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Master Collateral Agent, the Collateral Administrator or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or any Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

Section 8.07 Advances and Payments.
(a) On the date of each Term Loan, the Administrative Agent shall be authorized (but not obligated) to advance, for the account of each of the Lenders, the amount of the Term Loan to be made by it in accordance with its Term Loan Commitment hereunder. In such event, if a Lender has not in fact made its share of the applicable Term Loan available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith upon written demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to, but excluding, the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the Interest Rate otherwise applicable to such Term Loan. If such Lender pays such amount to the Administrative Agent, then (x) such amount shall constitute such Lender’s Term Loan included in such Term Loan and the Borrowers shall not be obligated to repay such amount pursuant to the preceding sentence if not previously repaid and (y) if such amount was previously repaid by the Borrowers, the Administrative Agent shall promptly make a corresponding amount available to the Borrowers.

(b) Any amounts received by the Administrative Agent in connection with this Agreement (other than amounts to which the Administrative Agent is entitled pursuant to Sections 2.19, 8.04 and 10.04), the application of which is not otherwise provided for in this Agreement, shall be applied in accordance with Section 2.10(b). All amounts to be paid to a Lender by the Administrative Agent shall be credited to that Lender, after collection by the Administrative Agent, in immediately available funds either by wire transfer or deposit in that Lender’s correspondent account with the Administrative Agent, as such Lender and the Administrative Agent shall from time to time agree.

Section 8.08 Sharing of Setoffs. Each Lender agrees that, except to the extent this Agreement expressly provides for payments to be allocated to a particular Lender, if it shall, through the exercise either by it or any of its banking Affiliates of a right of banker’s lien, setoff or counterclaim against a Borrower or a Guarantor, including, but not limited to, a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim and received by such Lender (or any of its banking Affiliates) under any applicable bankruptcy, insolvency or other similar law, or otherwise, obtain payment in respect of its Term Loans as a result of which the unpaid portion of its Term Loans is proportionately less than the unpaid portion of the Term Loans of any other Lender (a) it shall promptly purchase at par (and shall be deemed to have thereupon purchased) from such other Lender a participation in the Term Loans of such other Lender, so that the aggregate unpaid principal amount of each Lender’s Term Loans and its participation in Term Loans of the other Lenders shall be in the same proportion to the aggregate unpaid principal amount of all Term Loans then outstanding as the principal amount of its Term Loans prior to the obtaining of such payment was to the principal amount of all Term Loans outstanding prior to the obtaining of such payment and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that the Lenders share such payment pro-rata, provided that if any such non-pro-rata payment is thereafter recovered or otherwise set aside, such purchase of participations shall be rescinded (without interest). Each Loan Party expressly consents to the foregoing arrangements and agrees, to the fullest extent permitted by law, that any Lender holding (or deemed to be holding) a participation in a Term Loan acquired pursuant to this Section or any of its banking Affiliates may exercise any and all rights of banker’s lien, setoff or counterclaim with respect to any and all moneys owing by a Loan Party to such Lender as fully as if such Lender was the original obligee thereon, in the amount of such participation. The provisions of this Section 8.08 shall not be construed to apply to (a) any payment made by a Loan Party pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Term Loans or other Obligations owed to it or (c) any payment made by a Loan Party pursuant to the Fee Letter.
Section 8.09  **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 withholding tax applicable to such payment. If the Internal Revenue Service or any other Governmental Authority 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, or the Administrative Agent has paid over to the Internal Revenue Service applicable withholding tax relating to a payment to a Lender but no deduction has been made from such payment, without duplication of any indemnification obligations set forth in Section 8.04, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with any expenses incurred.

Section 8.10  **Right to Realize on Collateral and Enforce Guarantee.** Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrowers, the Agents, and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee, it being understood and agreed that all powers, rights, and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties and all powers, rights, and remedies under the Senior Secured Debt Documents (as defined in the Collateral Agency and Accounts Agreement) may be exercised solely by the Master Collateral Agent, in each case to the extent permitted by applicable law and in accordance with the terms hereof, the other Loan Documents and the other Senior Secured Debt Documents (as defined in the Collateral Agency and Accounts Agreement), and (ii) in the event of a foreclosure by the Master Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Master Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Master Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless 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 Master Collateral Agent at such sale or other disposition.

Section 8.11  **Intercreditor Agreements Govern.** The Administrative Agent and each other Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of any intercreditor agreement entered into pursuant to the terms hereof, (b) hereby authorizes and instructs the Collateral Administrator to enter into each intercreditor agreement (including each Intercreditor Agreement) entered into pursuant to the terms hereof and to subject the Liens securing the Obligations to the provisions thereof and (c) hereby authorizes and instructs the Collateral Administrator to enter into any intercreditor agreement that includes, or to amend any then existing intercreditor agreement to provide for, the terms described in the definition of “Junior Lien Debt”. In the event of any conflict or inconsistency between the provisions of each intercreditor agreement (including any Intercreditor Agreement) and this Agreement, the provisions of such intercreditor agreement shall control in all respects. With respect to any reference in this Agreement to another intercreditor agreement, subordination agreement or arrangement reasonably acceptable to the Administrative Agent and the Borrowers’ (or other similar description), Administrative Agent and the Collateral Administrator hereby agree to, and each Secured Party and each Lender hereby directs the Administrative Agent to, negotiate with the Borrowers in good faith and promptly (and in any event not later than ten (10) Business Days following written request by the Borrowers) enter into such other intercreditor or subordination agreement that is reasonably acceptable to the Administrative Agent (such acceptance not to be unreasonably withheld, conditioned, delayed or denied) upon request by the Borrowers.
Each Lender hereby agrees (i) that all Obligations will be and are secured equally and ratably by all Priority Liens (as defined in the Collateral Agency and Account Agreement) at any time granted by any Grantor to the Master Collateral Agent to secure any obligations in respect of any other Series of Senior Secured Debt (as defined in the Collateral Agency and Account Agreement), whether or not upon property otherwise constituting Collateral, and that all such Priority Liens will be enforceable by the Master Collateral Agent for the benefit of all holders of Senior Secured Debt Obligations (as defined in the Collateral Agency and Account Agreement) equally and ratably; and (ii) that each Lender is bound by the provisions of the Collateral Agency and Account Agreement, including the provisions relating to the ranking of Priority Liens and the order of application of proceeds from enforcement of Priority Liens; and each Lender consents to the terms of the Collateral Agency and Account Agreement and the Master Collateral Agent’s performance of, and directing the Master Collateral Agent to perform its obligations under, the Collateral Agency and Account Agreement and the other Senior Secured Debt Documents.

Section 8.12 Master Collateral Agent as Beneficiary. Without limitation of the terms of the Collateral Agency and Account Agreement, the parties hereto agree that the Master Collateral Agent is a third party beneficiary of Sections 8.02, 8.03 and 8.04, and any other terms hereof which operate to the benefit of the Master Collateral Agent, with full rights to enforce the same and no such term may be amended, modified or waived in any respect that would be materially adverse to the Master Collateral Agent without its written consent.

SECTION 9.

GUARANTY

Section 9.01 Guaranty.

(a) Each of the Guarantors unconditionally and irrevocably guarantees on a senior basis the due and punctual payment by the Borrowers of the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of the obligor whether or not post filing interest is allowed in such proceeding) (collectively, the “Guaranteed Obligations”). Each of the Guarantors further agrees that, to the extent permitted by applicable law, the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and it will remain bound upon this guaranty notwithstanding any extension or renewal of any of the Obligations. The Obligations of the Guarantors shall be joint and several. Each of the Guarantors further agrees that its guaranty hereunder is a primary obligation of such Guarantor and not merely a contract of surety.
To the extent permitted by applicable law, each of the Guarantors waives presentation to, demand for payment from and protest to the Borrowers or any Guarantor, and also waives notice of protest for nonpayment. The obligations of the Guarantors hereunder shall not, to the extent permitted by applicable law, be affected by (i) the failure of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or a Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party under the provisions of this Agreement or any other Loan Document or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Loan Documents; (iv) the release, exchange, waiver or foreclosure of any security held by the Master Collateral Agent or the Collateral Administrator for the Obligations or any of them; (v) the failure of the Administrative Agent or a Lender to exercise any right or remedy against any other Guarantor; or (vi) the release or substitution of any Collateral or any other Guarantor.

To the extent permitted by applicable law, each of the Guarantors further agrees that this guaranty constitutes a guaranty of payment when due and not just of collection, and waives any right to require that any resort be had by the Administrative Agent, the Collateral Administrator, the Master Collateral Agent, the Depository or a Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or a Lender in favor of any Borrower or any other Guarantor, or to any other Person.

To the extent permitted by applicable law, each of the Guarantors hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the Borrowers and of any other Guarantor and any circumstances affecting the ability of the Borrowers to perform under this Agreement.

To the extent permitted by applicable law, each Guarantor’s guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefore or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this guaranty (other than payment in full in cash of the Obligations in accordance with the terms of this Agreement (other than those that constitute unasserted contingent indemnification obligations)). None of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or any of the Lenders makes any representation or warranty in respect to any such circumstances or shall have any duty or responsibility whatsoever to any Guarantor in respect of the management and maintenance of the Obligations.
Upon the occurrence of the Obligations becoming due and payable (by acceleration or otherwise), the Lenders shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by the Administrative Agent.

The Guarantors hereby irrevocably agree that the obligations of each Guarantor hereunder are limited to the maximum amount that would not render the Guarantor’s obligations subject to avoidance under applicable fraudulent conveyance provisions of the Bankruptcy Code.

Section 9.02  No Impairment of Guaranty. To the extent permitted by applicable law, the obligations of the Loan Parties hereunder shall not be subject to any reduction, limitation or impairment for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, other than pursuant to a written agreement in compliance with Section 10.08 and shall not be subject to any defense or set-off, counterclaim, netting, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. To the extent permitted by applicable law, without limiting the generality of the foregoing, the obligations of any Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent or a Lender to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, by any waiver or modification of any provision hereof or thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Loan Party or would otherwise operate as a discharge of such Loan Party as a matter of law.

Section 9.03  Continuation and Reinstatement, Etc. Each Guarantor further agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Administrative Agent, any Lender or any other Secured Party upon the bankruptcy or reorganization of a Borrower or a Guarantor, or otherwise.

Section 9.04  Subrogation; Fraudulent Conveyance.

(a) Upon payment by any Guarantor of any sums to the Administrative Agent, the Collateral Administrator, the Master Collateral Agent, the Depositary or a Lender hereunder, all rights of such Guarantor against the Borrowers arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior payment in full of all the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of an obligor whether or not post filing interest is allowed in such proceeding). If any amount shall be paid to such Guarantor for the account of the Borrowers relating to the Obligations prior to payment in full of all the Obligations, such amount shall be held in trust for the benefit of the Administrative Agent, the Collateral Administrator, the Master Collateral Agent and the Lenders and shall forthwith be paid to the Administrative Agent, the Collateral Administrator, the Master Collateral Agent, the Depositary and the Lenders to be credited and applied to the Obligations, whether matured or unmatured. Each Loan Party hereby agrees that (1) all Indebtedness and other payment obligations owed to Delta by Loyalty Co or any other SPV Party shall be subordinate and junior in right of payment to (and not subject to setoff, netting or recoupment prior to) the prior payment in full of all the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of an obligor whether or not post filing interest is allowed in such proceeding); provided that, in the case of clauses (1) above, so long as no Event of Default shall have occurred and be continuing and neither the Required Lenders nor the Administrative Agent has provided written direction to cease such payments, any payments in respect of such Indebtedness and other payment obligations shall not be prohibited (to the extent not otherwise prohibited under any Loan Document); and (2) all Indebtedness and other payment obligations owed by Delta to Loyalty Co or any other SPV Party shall not be subordinated or junior in right of payment to, and shall rank pari passu with, any other indebtedness or payment obligations of Delta. Notwithstanding anything in this paragraph to the contrary, in no event will setoff or netting apply with respect to amounts due from any Loan Party to Loyalty Co (or any other SPV Party) pursuant any Intercompany Agreement, the Delta Intercompany Note or any IP Agreement or with respect to funds such Loan Party has received pursuant to any SkyMiles Agreement.
(b) Each Guarantor, and by its acceptance of this Agreement, the Master Collateral Agent and each other Secured Party, hereby confirms that it is the intention of all such Persons that this Agreement and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the guaranties hereunder and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Master Collateral Agent, the other Secured Parties and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor under the guaranties hereunder and the Obligations of such Guarantor under this guaranty not constituting a fraudulent transfer or conveyance.

SECTION 10.

MISCELLANEOUS

Section 10.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein or under any other Loan Document shall be in writing (including by facsimile or electronic mail (other than to the Borrowers, unless agreed by the applicable Borrower in its sole discretion)), and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to any Loan Party other than the SPV Parties, to it at Delta Air Lines, Inc., 1030 Delta Boulevard, Atlanta, GA 30354, Attention of: (x) Treasurer, Dept. 856, Telecopier No.: , Telephone No. : and (y) Chief Legal Officer, Dept. 971, Telecopier No.: , Telephone No.: ;
If to any SPV Party, to it at c/o Delta Air Lines, Inc., 1030 Delta Boulevard, Atlanta, GA 30354, Attention of: (x) Treasurer, Dept. 856, Telecopier No.: , Telephone No.: and (y) Chief Legal Officer, Dept. 971, Telecopier No.: , Telephone No.: ;

(iii) if to the Administrative Agent, (A) with respect to any notice provided under Section 2, to it at: 400 Jefferson Park, Whippany, NJ 07981, Attn.: , email: , Telephone No.: and (B) with respect to any other notice, to it at: 745 Seventh Avenue, New York, NY 10001, Attn.: , email: , Telephone No.: ;

(iv) if to the Collateral Administrator, to it at U.S. Bank National Association, 1349 W Peachtree St. NW, Suite 1050, Atlanta, GA 30309, Attention: , Telecopier No.: , Telephone No.: ; and

(v) if to any Lender, to it at its address (or telecopy number) set forth in, (A) in the case of each initial Lender, in its administrative questionnaire in a form as the Administrative Agent may require and (B) in the case of any other Lender, its Assignment and Acceptance.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrowers may, in their reasonable discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications; provided further that no such approval shall be required for any notice delivered to the Administrative Agent by electronic mail pursuant to Section 2.13(a).

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 10.02 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Loan Party without such consent shall be null and void), provided that the foregoing shall not restrict any transaction permitted by Section 6.10, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.02. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (d) of this Section 10.02) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent, the Master Collateral Agent, the Collateral Administrator, the Depositary and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement; provided further that the Master Collateral Agent and the Depositary shall be express third party beneficiaries of this Agreement.
(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment if the assignee is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender, in each case so long as such assignee is an Eligible Assignee, and no consent of the Administrative Agent shall be required for an assignment of Term Loans to the Borrowers in accordance with Section 10.02(g); and

(B) the Borrowers; provided that no consent of the Borrowers shall be required for an assignment (I) if an Event of Default under Section 7.01(b), 7.01(f), 7.01(g) or 7.01(o) has occurred and is continuing, (II) if the assignee is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender, in each case so long as such assignee is an Eligible Assignee, or (III) of Term Loans by any of the Lead Arrangers or any of its Affiliates as part of the primary syndication of the Term Loans (as determined by the Lead Arrangers) as previously consented to in writing (including by email) by the Borrowers, in each case so long as such assignee is an Eligible Assignee; provided, further that the Borrowers’ consent to any assignment of Term Loans will be deemed given with respect to a proposed assignment if no response is received within ten (10) Business Days after having received a written request from such Lender pursuant to this Section 10.02(b);

(i) Assignments shall be subject to the following additional conditions:

(A) any assignment of any portion of the Term Loan Commitment and Term Loans shall be made to an Eligible Assignee;

(B) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Term Loan Commitments or Term Loans, the amount of such Term Loan Commitments or Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1.0 million, and after giving effect to such assignment, the portion of the Term Loan or Term Loan Commitment held by the assigning Lender of the same tranche as the assigned portion of the Term Loan or Term Loan Commitment shall not be less than $1.0 million, in each case, unless the Borrowers and the Administrative Agent otherwise consent; provided, that any such assignment shall be in increments of $500,000 in excess of the minimum amount described above;
each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement;

the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 for the account of the Administrative Agent (except in the case of assignments made by or to Barclays Bank PLC, Goldman Sachs Lending Partners LLC or any of their respective affiliates);

the assignee, if it was not a Lender immediately prior to such assignment, shall deliver to the Administrative Agent an administrative questionnaire in a form as the Administrative Agent may require; and

notwithstanding anything to the contrary herein, any assignment of any Term Loans to the Borrowers shall be subject to the requirements of Section 10.02(g).

For the purposes of this Section 10.02(b), the term “Approved Fund” shall mean with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers or manages such Lender.

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section 10.02, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.16 and 10.04). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.02 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 10.02.
The Administrative Agent shall maintain at its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and principal amount (and stated interest) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Loan Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and any Lender (only with respect to such Lender’s Term Loans), at any reasonable time and from time to time upon reasonable prior notice.

Notwithstanding anything to the contrary contained herein, no assignment may be made hereunder to any Defaulting Lender or any of its Subsidiaries, or any Person, who upon becoming a Lender, would constitute any of the foregoing Persons in this clause (v).

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment will be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment 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 Borrowers and the Administrative Agent, the applicable pro rata share of Term 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 Borrowers, Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Term Loans in accordance with its Aggregate Exposure Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder becomes effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest will be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee’s completed administrative questionnaire in a form as the Administrative Agent may require (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 10.02 and any written consent to such assignment required by clause (b) of this Section 10.02, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04, 8.04 or 10.04(d), the Administrative Agent shall have no obligation to accept such Assignment and Acceptance and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (c).
Any Lender may, without the consent of the Borrowers or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Term Loan Commitment and the Term Loans); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement; and (D) such Participant is not a Defaulting Lender, Disqualified Lender or any Affiliate thereof. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.08(a) that affects such Participant, to the extent that such Lender participating such interest would be entitled to vote. Subject to Section 10.02(d)(ii), the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.14 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.02(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.08 as though it were a Lender, provided such Participant agrees to be subject to the requirements of Section 8.08 as though it were a Lender. Each Participant that sells a participation, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Term Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Term Loan Commitments, Term Loans or other obligations under this Agreement or any Loan Document) except to the extent that such disclosure is necessary to establish that such Term Loan Commitment, Term Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender, the Loan Parties and the Administrative Agent shall treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary. A Participant shall not be entitled to receive any greater payment under Section 2.14 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant and shall be subject to the terms of Section 2.18(a). The Lender selling the participation to such Participant shall be subject to the terms of Section 2.18(b) if such Participant requests compensation or additional amounts pursuant to Section 2.14 or 2.16. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless such Participant agrees, for the benefit of the Borrowers, to comply with Sections 2.16(f), 2.16(g) and 2.16(h) as though it were a Lender.
(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender, and this Section 10.02 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.02, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Loan Parties furnished to such Lender by or on behalf of any Loan Party; provided that prior to any such disclosure, each such assignee or participant or proposed assignee or participant provides to the Administrative Agent its agreement in writing to be bound for the benefit of the Borrowers by either the provisions of Section 10.03 or other provisions at least as restrictive as Section 10.03.

(g) Notwithstanding anything to the contrary contained herein, (x) any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to any Borrower and (y) any Borrower may, from time to time, purchase or prepay Term Loans, in each case, on a non-pro rata basis through (1) Dutch auction procedures open to all applicable Lenders in accordance with customary procedures to be mutually agreed between the Borrowers and the Administrative Agent or (2) open market purchases; provided that:

(i) any Term Loans or Term Loan Commitments acquired by any Borrower shall be immediately and automatically retired and cancelled concurrently with the acquisition thereof;

(ii) no assignment of Term Loans to any Borrower may occur while an Event of Default has occurred and is continuing hereunder;

(iii) in connection with each assignment pursuant to this Section 10.02(g), none of Delta or Loyalty Co purchasing any Lender’s Term Loans shall be required to make a representation that it is not in possession of material nonpublic information with respect to the Borrowers and their respective Subsidiaries or their respective securities, and all parties to such transaction may render customary “big boy” letters to each other (or to the auction agent, if applicable);

(iv) in the case of any Term Loans (A) acquired by, or contributed to, any Borrower and (B) cancelled and retired in accordance with this Section 10.02(g), (1) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of such Term Loans acquired by such Person and (2) any scheduled principal repayment installments with respect to the Term Loans of such Class occurring pursuant to Section 2.10 prior to the final maturity date for Term Loans of such Class, shall be reduced pro rata by the par value of the aggregate principal amount of Term Loans so purchased or contributed (and subsequently cancelled and retired), with such reduction being applied solely to the remaining Term Loans of the Lenders which sold or contributed such Term Loans; and
(v) assignment to any Borrower and cancellation of Term Loans in connection with a Dutch auction or open market purchases shall not constitute a mandatory or voluntary payment for purposes of Section 2.12 or 2.13.

(h) Disqualified Lenders.

(i) No participation or assignment, shall be made or sold to any Person that was a Disqualified Lender as of the date (the “Trade Date”) on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrowers have consented to such assignment as otherwise contemplated by this Section 10.02, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Lender after the applicable Trade Date (including as a result of the delivery of a notice pursuant to the definition of “Disqualified Lender”), (x) such assignee shall not retroactively be disqualified from becoming a Lender in respect of the Term Loans it holds or has entered into an agreement to purchase as of such notice and (y) the execution by the Borrowers of an Assignment and Acceptance with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Lender. Any assignment in violation of this clause (h)(i) shall not be void, but the other provisions of this clause (h) shall apply.

(ii) If any assignment is made to any Disqualified Lender without the Borrowers’ prior consent in violation of clause (i) above, the Borrowers may, at their sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Lenders, prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Term Loans, in each case plus accrued interest (other than Default Interest), fees and all other amounts (other than principal amounts or premiums) payable to it hereunder and under the other Loan Documents and/or (B) require such Disqualified Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 10.02), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and the other the other Loan Documents; provided that (i) the Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.02(b) and (ii) such assignment does not conflict with applicable laws.
(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (A) will not (x) have the right to receive information, reports or other materials provided to the Lenders by the Loan Parties, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Bankruptcy Laws ("Plan of Reorganization"), each Disqualified Lender party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Lender does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Bankruptcy Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Bankruptcy Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrowers hereby expressly authorize the Administrative Agent, to (A) post the list of Disqualified Lenders provided by the Borrowers and any updates thereto from time to time (collectively, the “DQ List”) on the Syndtrak site or other deal platform for the Facility, including that portion of the Syndtrak site or other deal platform for the Facility that is designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

Section 10.03 Confidentiality. Each Lender and each Agent agrees to keep any information delivered or made available by (or on behalf of) any Loan Party to it confidential, in accordance with its customary procedures, from anyone other than Persons employed or retained by such Lender, Agent or their respective Affiliates who are or are expected to become engaged in evaluating, approving, structuring, insuring or administering the Term Loans, and who are advised by such Lender or Agent of the confidential nature of such information; provided that
nothing herein shall prevent any Lender or Agent from disclosing such information (a) to any of its Affiliates and its and their respective agents, directors and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential) or to any other Lender (provided that such Lender shall be responsible for such recipient’s compliance with this Section 10.03), (b) upon the order of any court or administrative agency, (c) upon the request or demand of any regulatory agency or authority (including any self-regulatory authority), (d) which has been publicly disclosed other than as a result of a disclosure by the Administrative Agent or any Lender which is not permitted by this Agreement or other confidentiality obligations owed to Delta or any of its Subsidiaries, (e) in connection with any litigation to which any Agent, any Lender, or their respective Affiliates may be a party to the extent reasonably required under applicable rules of discovery, (f) to the extent reasonably required in connection with the exercise of any remedy hereunder, (g) to such Lender’s or Agent’s legal counsel, independent auditors, accountants and other professional advisors, (h) on a confidential basis to (I) any Rating Agency in connection with rating Delta and its Subsidiaries or any Facility, (II) any direct or indirect provider of credit protection to such Lender or its Affiliates (or its brokers) (other than a Disqualified Lender or any other Person to whom the Borrowers have refused to consent to an assignment) (provided that such Lender shall be responsible for such recipient’s compliance with this Section 10.03) and (III) market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders after the Closing Date and in connection with the administration and management of the Facility (provided that such information is limited to the existence of this Agreement and information about the Facility that is customarily shared for facilities of this type), (i) with the prior consent of the Borrowers, (j) to any actual or proposed participant or assignee of all or part of its rights hereunder (other than a Disqualified Lender or any other Person to whom the Borrowers have refused to consent to an assignment) or to any direct or indirect contractual counterparty (or the legal counsel, independent auditors, accountants and other professional advisors thereto) to any swap or derivative transaction relating to the Borrowers and their obligations, in each case, subject to the proviso in Section 10.02(f) (with any reference to any assignee or participant set forth in such proviso being deemed to include a reference to such contractual counterparty for purposes of this Section 10.03(j)), (k) to the extent that such information is received by such Lender or Agent from a third party that is not, to such Lender’s or Agent’s knowledge, subject to confidentiality obligations to a Borrower or any of its Affiliates and (l) to the extent that such information is independently developed by such Lender or Agent. If any Lender or Agent is in any manner requested or required to disclose any of the information delivered or made available to it by any Loan Party under clauses (b) or (e) of this Section 10.03, such Lender or Agent will, to the extent permitted by law, provide the Loan Parties with prompt notice, to the extent reasonable, so that the Loan Parties may seek, at their sole expense, a protective order or other appropriate remedy or may waive compliance with this Section 10.03.

Section 10.04 Expenses; Indemnity; Damage Waiver.

(a) (i) The Borrowers shall, jointly and severally, pay or reimburse:
(1) all reasonable fees and reasonable out-of-pocket expenses of the Administrative Agent, the Master Collateral Agent, the Collateral Administrator, the Depositary and the Lead Arrangers (in the case of legal counsel and other advisors, limited to the reasonable fees, disbursements and other charges of (i) Milbank LLP, special counsel to the Administrative Agent, (ii) Smith, Gambrell & Russell, LLP, special counsel to the Master Collateral Agent, the Collateral Administrator and the Depositary, (iii) local counsel in each material jurisdiction and (iv) other advisors that are approved by the Borrowers so long as no Event of Default has occurred or is continuing) associated with the syndication of the credit facility provided herein and the preparation, execution, delivery and administration of the Loan Documents and (in the case of the Administrative Agent) any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including the reasonable fees and out-of-pocket, documented expenses of one outside counsel for the Administrative Agent with respect thereto and one outside counsel for the Master Collateral Agent, the Collateral Administrator and the Depositary collectively, and with respect to advising the Administrative Agent as to its rights and remedies under this Agreement (and, in the case of an actual or perceived conflict of interest or potential conflict of interest no more than the number of additional law firms as counsel for the various parties as is necessary to avoid any such actual or potential conflict of interest);

(2) in connection with any enforcement of the Loan Documents, all reasonable and documented fees and out-of-pocket expenses of the Administrative Agent, the Master Collateral Agent, the Collateral Administrator, the Depositary and the Lenders (limited to the reasonable fees, disbursements and other charges of (x) in the case of legal counsel, one outside counsel for the Administrative Agent, and one outside counsel for the Lenders, collectively, and one outside counsel for the Master Collateral Agent and the Collateral Administrator, collectively, and if necessary regulatory and local counsel in each material jurisdiction and, in the case of an actual or perceived conflict of interest or potential conflict of interest no more than the number of additional law firms as counsel for the various parties as is necessary to avoid any such actual or potential conflict of interest and (y) other advisors);

(3) all reasonable, documented, out-of-pocket costs, expenses, taxes, assessments and other charges (including the reasonable fees, disbursements and other charges of counsel for the Administrative Agent, the Master Collateral Agent and the Collateral Administrator) incurred by the Administrative Agent, the Master Collateral Agent and the Collateral Administrator in connection with any filing, registration, recording or perfection of any security interest contemplated by any Loan Document or incurred in connection with any release or addition of Collateral after the Closing Date; and
(4) all costs and expenses related to acquiring the ratings of the Term Loans from the Rating Agencies, including any monitoring fees of the Rating Agencies in respect of the rating of the Term Loans.

(ii) All payments or reimbursements pursuant to the foregoing clause (a)(i) shall be paid within thirty (30) days of written demand together with back-up documentation supporting such reimbursement request.

(b) The Borrowers shall, jointly and severally, indemnify each Agent, each Lead Arranger and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited in the case of legal fees and expenses, to one (1) outside counsel to all Indemnitees, taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel to all such similarly situated affected Indemnitees)) incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Term Loan or the use of the proceeds therefrom, (iii) in connection with clauses (i) and (ii) above, any Release of Hazardous Materials on or from any property owned or operated by Delta or any of its Subsidiaries, or any Environmental Liability related to or asserted against Delta or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto and whether or not the same are brought by Delta, its equity holders, affiliates or creditors or any other Person; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to (x) have resulted from the material breach of the obligations of such Indemnitee under the Loan Documents or the gross negligence or willful misconduct of such Indemnitee or (y) arise from disputes solely among the Indemnitees (other than any dispute involving claims against any Person in its capacity as an Agent or similar role hereunder) that do not involve an act or omission by Delta or any of its Subsidiaries. For the avoidance of doubt, no Indemnitee shall be liable for any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems, except to the extent any such damages are found by a final nonappealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnitee. This Section 10.04(b) shall not apply with respect to Taxes other than Taxes that represent losses or damages arising from any non-Tax claim.

(c) [Reserved].

(d) To the extent that the Borrowers fail to pay any amount required to be paid by it to the Administrative Agent, the Master Collateral Agent or the Collateral Administrator under paragraph (a) or (b) of this Section 10.04, each Lender severally agrees to pay to the Administrative Agent, the Master Collateral Agent or the Collateral Administrator such portion of the unpaid amount equal to such Lender’s Aggregate Exposure Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Master Collateral Agent or the Collateral Administrator in its capacity as such.
To the extent permitted by applicable law, each party hereto shall not assert, and hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions or any Term Loan or the use of the proceeds thereof; provided that nothing in this clause (e) shall relieve any party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

Section 10.05 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall, to the extent permitted by law, be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 10.05. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.06 No Waiver. No failure on the part of any Agent or any of the Lenders to exercise, and no delay in exercising, any right, power or remedy hereunder or any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.
Section 10.07  Extension of Maturity. Should any payment of principal of or interest or any other amount due hereunder become due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, in the case of principal, interest shall be payable thereon at the rate herein specified during such extension.

Section 10.08  Amendments, Etc.

(a)  Except as set forth in Sections 2.09 and Section 2.27 or as otherwise set forth in this Agreement, no modification, amendment or waiver of any provision of this Agreement or any Collateral Document (other than any Account Control Agreement and the Security Agreement, each of which may be amended in accordance with its terms), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrowers and the Required Lenders (or signed by the Administrative Agent or the Collateral Administrator with the consent of the Required Lenders), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given; provided, however, that no such modification or amendment shall without the prior consent of:

(i)  each Lender directly and adversely affected thereby (A) increase the Term Loan Commitment of such Lender or extend the termination date of the Term Loan Commitment of such Lender (it being understood that a waiver of any Default, Event of Default or mandatory repayment required under this Agreement shall not constitute an increase in or extension of the termination date of the Term Loan Commitment of a Lender), (B) reduce the principal amount or premium, if any, of any Term Loan, or the rate of interest payable thereon (provided that only the consent of the Required Lenders shall be necessary for a waiver of Default Interest referred to in Section 2.08) or (C) extend any scheduled date for the payment of principal, interest or Fees hereunder or to reduce such percentage of any Fees payable hereunder or extend the scheduled final maturity of the Borrowers' obligations hereunder;

(ii)  all of the Lenders (A) amend or modify any provision of this Agreement which provides for the unanimous consent or approval of the Lenders to reduce such percentage or (B) release all or substantially all of the Liens granted to the Master Collateral Agent or the Collateral Administrator hereunder or under any other Collateral Document (except to the extent contemplated hereby or by the terms of a Collateral Document), or release all or substantially all of the Guarantors;

(iii)  the Lenders holding at least 66.67% of the total Term Loan Commitments and/or applicable Term Loans (A) for the release of liens on Collateral (other than as permitted hereunder or under any Loan Document), (B) to release any guarantees of this Facility (other than as permitted hereunder or under any Loan Document), (C) to amend, waive or otherwise modify Section 6.14, or (D) for any shortening or subordinating of term or reduction in liquidated damages under any IP License;
in connection with an amendment expressly permitted hereunder that addresses solely a repricing transaction in which any Class of Term Loan Commitments and/or Term Loans is refinanced with a replacement Class of Term Loan Commitments and/or Term Loans bearing (or is modified in such a manner such that the resulting Term Loan Commitments and/or Term Loans bear) a lower effective yield, any Lender holding Term Loan Commitments and/or Term Loans subject to such permitted repricing transaction that will continue as a Lender in respect of the repriced Class of Term Loan Commitments and/or Term Loans or modified Class of Term Loan Commitments and/or Term Loans;

the applicable Required Class Lenders in connection with an amendment to Section 2.10, Section 2.17 or the last paragraph of Section 7.01 that directly and materially adversely affect the rights of Lenders holding Term Loan Commitments or Term Loans of one Class differently from the rights of Lenders holding Term Loan Commitments or Term Loans of any other Class;

all Lenders under any Class, change the application of prepayments as among or between Classes under Section 2.12 which is being allocated a lesser repayment or prepayment as a result thereof (it being understood that if additional Classes of Term Loans or additional Term Loans under this Agreement consented to by the Required Lenders or additional Term Loans permitted hereby are made, such new Term Loans may be included on a pro rata basis in the various prepayments required pursuant to Section 2.12); and

all Lenders, reduce the percentage specified in the definition of “Required Lenders” or “Required Class Lenders” or otherwise amend this Section 10.08 in a manner that has the effect of changing the number or percentage of Lenders that must approve any modification, amendment, waiver or consent;

provided, further, that any Collateral Document may be amended, supplemented or otherwise modified with the consent of the applicable Grantor and the Master Collateral Agent or Collateral Administrator, as applicable, (i) to add assets (or categories of assets) to the Collateral covered by such Collateral Document or (ii) to remove any asset or type or category of asset (including after-acquired assets of that type or category) from the Collateral covered by such Collateral Document to the extent being or having been sold or transferred to the extent the release thereof is permitted by the Loan Documents.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the affected Lenders and shall be binding upon the Borrowers, the other Loan Parties, such Lenders, the Administrative Agent, the Master Collateral Agent, the Collateral Administrator and all future holders of the affected Term Loans. In the case of any waiver, the Borrowers, the other Loan Parties, the Lenders, the Administrative Agent, the Master Collateral Agent and the Collateral Administrator shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligations to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.
In addition, notwithstanding the foregoing, this Agreement (and, as appropriate, the other Loan Documents) may be amended with the written consent of the Administrative Agent (not to be unreasonably withheld or delayed), the Borrowers and the Lenders providing the relevant Replacement Term Loans as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrowers (x) to permit the refinancing, replacement or modification of all outstanding Term Loans of any Class ("Refinanced Term Loans") with a replacement term loan tranche ("Replacement Term Loans") hereunder and (y) to include appropriately the Lenders holding such credit facilities in any determination of Required Lenders; provided that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans (plus an amount equal to all accrued but unpaid interest, fees, premiums, and expenses incurred in connection therewith (including original issue discount, upfront fees and similar items)) unless otherwise permitted hereunder (including utilization of any other available baskets or incurrence based amounts), (b) the Weighted Average Life to Maturity of such Replacement Term Loans shall not be shorter than the remaining Weighted Average Life to Maturity of such Refinanced Term Loans (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the applicable Term Loans) or any other then existing Priority Lien Debt at the time of such refinancing, except in the case of customary bridge loans which, subject only to customary conditions (which shall be limited to no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for long-term refinancing in the form of additional Replacement Term Loans permitted under (and subject to the requirements of) this Section 10.08 or Priority Lien Debt permitted under (and subject to the requirements of) Section 6.02(c), (c) the maturity date for such Replacement Term Loans shall be on or after the Latest Maturity Date, except in the case of customary bridge loans which, subject only to customary conditions (which shall be limited to no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for long-term refinancing in the form of additional Replacement Term Loans permitted under (and subject to the requirements of) this Section 10.08 or Priority Lien Debt permitted under (and subject to the requirements of) Section 6.02(c), (d) prior to the incurrence of such Replacement Term Loans, the Rating Agency Condition shall have been satisfied, (e) after giving effect to the incurrence of such Replacement Term Loans no Event of Default or Early Amortization Event shall have occurred and be continuing and (f) the covenants, events of default and guarantees shall (i) be reasonably acceptable to the Administrative Agent or (ii) be substantially similar to, or (taken as a whole) not be materially more restrictive on the SPV Parties (as reasonably determined by Loyalty Co) when taken as a whole, than the terms of the Refinanced Term Loans (except for (1) covenants, events of default and guarantees applicable only to periods after the Latest Maturity Date (as of the date of the refinancing) of such Class of Refinanced Term Loans and (2) pricing, fees, rate floors, premiums, optional prepayment or redemption terms) unless the Lenders under the other Classes of Term Loans existing on the refinancing date (other than the Refinanced Term Loans), receive the benefit of such more restrictive terms; provided that in no event shall such Replacement Term Loans be subject to events of default resulting (either directly or through a cross-default or cross-acceleration provision) from the occurrence of any event described in the definition of “Parent Bankruptcy Event” (or the occurrence of any such event with respect to any Subsidiary of Delta other than any SPV Party) except on the same terms as the then-outstanding Term Loans.
The Lenders hereby irrevocably agree that the Liens granted to the Master Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) upon the sale or other disposition of such Collateral (including as part of or in connection with any other sale or other disposition permitted hereunder) to any Person other than another Loan Party, to the extent such sale or other disposition is made in compliance with the terms of the Collateral Documents (and the Master Collateral Agent shall rely conclusively on a certificate and/or opinion of counsel to that effect provided to it by any Loan Party, including upon its reasonable request without further inquiry), (ii) to the extent such Collateral is comprised of property leased to a Loan Party, upon termination or expiration of such lease, (iii) if the release of such Lien is approved, authorized or ratified in writing by Lenders holding at least 66.67% of the total Term Loan Commitments and/or applicable Term Loans, (iv) as required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Master Collateral Agent pursuant to the Collateral Documents and (v) if such assets become Excluded Property. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. The Lenders hereby authorize the Administrative Agent and the Master Collateral Agent, as applicable, to, and the Administrative Agent and the Master Collateral Agent agree to, promptly execute and deliver any instruments, documents, and agreements necessary or desirable or reasonably requested by the Borrowers to evidence and confirm the release of any Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender.

Notwithstanding anything herein to the contrary, the Loan Documents may be amended to (i) add syndication or documentation agents and make customary changes and references related thereto, and (ii) if applicable, add or modify “parallel debt” language in any jurisdiction in favor of the Master Collateral Agents or add Master Collateral Agents, in each case under (i) and (ii), with the consent of only the Borrowers, the Administrative Agent and in the case of clause (ii), the applicable Master Collateral Agent.
Notwithstanding anything in this Agreement (including, without limitation, this Section 10.08) or any other Loan Document to the contrary, (i) this Agreement and the other Loan Documents may be amended to effect an incremental facility, refinancing facility or extension facility in accordance with Sections 2.27, this Section 10.08 or Section 2.28, respectively, and the Administrative Agent and the Borrowers may effect such amendments to this Agreement and the other Loan Documents without the consent of any other party as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the terms of any such incremental facility, refinancing facility or extension facility, including in the case of any such incremental facility to create such facility as a fungible Class of Term Loans (including by increasing (but, for the avoidance of doubt, not be decreasing), the amount of amortization due and payable with regard to any Class of Term Loans); (ii) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of any Indebtedness as expressly contemplated by the terms of such Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent with the consent of the Borrowers, are required to effectuate the foregoing); provided, further, that no such agreement shall amend, modify or otherwise directly and adversely affect the rights or duties of the Administrative Agent, the Master Collateral Agent or the Collateral Administrator hereunder or under any other Loan Document (which shall include any such amendment or modification to Section 2.10(b)) or under any other Loan Document without its prior written consent; (iii) any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document) may be amended by an agreement in writing entered into by the Borrowers and the Administrative Agent to (x) cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Borrowers), (y) effect administrative changes of a technical or immaterial nature and (z) correct or cure any incorrect cross references or similar inaccuracies and such amendment shall be deemed approved by the Lenders if the Lenders shall have received at least five (5) Business Days’ prior written notice of such change and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; and (iv) guarantees, collateral documents and related documents executed by the Loan Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with any other Loan Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the applicable Loan Party or Loan Parties and the Administrative Agent or the Master Collateral Agent in its or their respective sole discretion, to (A) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, (B) as required by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable requirements of law, or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Borrowers) or to cause such guarantee, collateral or security document or other document to be consistent with this Agreement and the other Loan Documents.

Notwithstanding anything in this Agreement or any Collateral Document to the contrary, (i) the Administrative Agent may, in its sole discretion, direct the Collateral Administrator, in its role as Collateral Controlling Party, to direct the Master Collateral Agent to grant extensions of time for the satisfaction of any of the requirements under Sections 5.12 and 5.14, and/or any Collateral Documents in respect of any particular Collateral or any particular Subsidiary and (ii) the Collateral Administrator, as “Collateral Controlling Party” under the Collateral Agency and Accounts Agreement and each Senior Secured Debt Document, hereby agrees to provide instructions to the Master Collateral Agent when directed in writing to do so by the Administrative Agent or the Required Lenders. The Collateral Administrator shall not be required to exercise any discretionary rights or remedies hereunder or give any consent hereunder unless, subject to the other terms and provisions of this Agreement, it shall have been expressly directed to do so in writing as set forth in the immediately preceding sentence.
(b) Promptly after execution of any amendment or modification to this Agreement, any Collateral Document or any other Loan Document to which the Master Collateral Agent or the Collateral Administrator is a party, the Borrowers shall provide a copy of such executed amendment or modification to the Master Collateral Agent and the Collateral Administrator, as applicable.

(c) No notice to or demand on any Loan Party shall entitle any Loan Party to any other or further notice or demand in the same, similar or other circumstances. Each assignee under Section 10.02(b) shall be bound by any amendment, modification, waiver, or consent authorized as provided herein, and any consent by a Lender shall bind any Person subsequently acquiring an interest on the Term Loans held by such Lender. No amendment to this Agreement shall be effective against any Loan Party unless signed by the Borrowers.

(d) Notwithstanding anything to the contrary contained in Section 10.08(a) or elsewhere, (i) in the event that the Borrowers request that (A) this Agreement be modified or amended in a manner which would require the unanimous consent of all of the Lenders or all Lenders of a Class or the consent of all Lenders (or all Lenders of a Class) directly and adversely affected thereby and, in each case, such modification or amendment is agreed to by the Required Lenders (or at least 50% of the directly and adversely affected Lenders) or Required Class Lenders (or at least 50% of the directly and adversely affected Lenders of such Class) or (B) the maturity of any Class of Term Loans be extended pursuant to Section 2.28, then the Borrowers may (1) replace any applicable non-consenting Lender (each a “Non-Consenting Lender”) or any non-extending Lender (each a “Non-Extending Lender”), as applicable, in accordance with an assignment pursuant to Section 10.02 (and such Non-Consenting Lender or Non-Extending Lender shall reasonably cooperate in effecting such assignment) or (2) repay such Lender on a non pro rata basis; provided that (x) such amendment or modification can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this clause (i)) and (y) such Non-Consenting Lender or Non-Extending Lender shall have received payment of an amount equal to the outstanding principal amount of its Term Loans, accrued interest thereon, accrued Fees and all other amounts due and payable to it under this Agreement from the applicable assignee or the Borrowers and (ii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Term Loan Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that the Term Loan Commitment and the outstanding Term Loans or other extensions of credit held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).
Section 10.09  **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 10.10  **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

Section 10.11  **Survival.** All covenants, agreements, representations and warranties made by the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Term Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Early Amortization Event or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder. The provisions of Sections 2.14, 2.15, 2.16 and 10.04 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Term Loans, the expiration or termination of the Term Loan Commitments, or the termination of this Agreement or any provision hereof.

Section 10.12  **Execution in Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic .pdf copy shall be effective as delivery of a manually executed counterpart of this Agreement. Notwithstanding anything contained herein to the contrary, the Collateral Administrator is not under any obligation to accept an electronic .pdf copy unless expressly agreed to by the Collateral Administrator pursuant to procedures approved by it. The Collateral Administrator shall not have a duty to inquire into or investigate the authenticity or authorization of any such electronic signature and both shall be entitled to conclusively rely on any such electronic signature without any liability with respect thereto. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or any other Loan Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.
Section 10.13 USA Patriot Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering (for purposes of this Section 10.13, “Applicable Law”), each of the Collateral Administrator and the Master Collateral Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Master Collateral Agent or the Collateral Administrator. Accordingly, subject to the terms of any binding confidentiality restrictions or limitations imposed by Applicable Law, each of the parties agrees to provide to the Collateral Administrator and the Master Collateral Agent promptly following its reasonable request from time to time such customary and reasonably available identifying information and documentation as may be available for such party in order to enable the Collateral Administrator and the Master Collateral Agent to comply with Applicable Law.

Section 10.14 New Value. It is the intention of the parties hereto that any provision of Collateral by a Grantor as a condition to, or in connection with, the making of any Term Loan hereunder, shall be made as a contemporaneous exchange for new value given by the Lenders to the Borrowers.

Section 10.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.

Section 10.16 No Fiduciary Duty. The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Borrowers, their stockholders and/or their affiliates. Each Borrower agrees that nothing in the Loan Documents or otherwise related to the Transactions will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrowers, their stockholders or their affiliates, on the other hand. The parties hereto (other than the Collateral Administrator) acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other hand, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Borrower, its stockholders or its affiliates on other matters) or any other obligation to any Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Borrower, its management, stockholders, affiliates, creditors or any other Person. Each Borrower acknowledges and agrees that such Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Borrower agrees that it will not claim that any Lender or the Collateral Administrator has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Borrower, in connection with such transaction or the process leading thereto.
Section 10.17  **CFC or a FSHCO Provisions.** Notwithstanding any term of any Loan Document, no loan or other obligation of any Borrower, under any Loan Document, may be, directly or indirectly (including by application of any payments made by or amounts received or recovered from any CFC or FSHCO):

(i) guaranteed by a CFC or a FSHCO;

(ii) secured by any assets of a CFC or FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO); or

(iii) secured by a pledge or other security interest in excess of 65% of the voting equity interests of any CFC or FSHCO.

Section 10.18  [Reserved].

Section 10.19  **Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:
(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

Section 10.20 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, each party to this Agreement, each Lead Arranger and their respective Affiliates, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loans or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loans and this Agreement; or

(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 Term Loans and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loans and this Agreement.
(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender, 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 each party to this Agreement, each Lead Arranger and their respective Affiliates, that, 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 Term Loans and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 10.21 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):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 10.22 Limited Recourse; Non-Petition. Notwithstanding any other provision of this Agreement or any other document to which it may be a party, the obligations of each SPV Party from time to time and at any time hereunder are limited recourse obligations of such SPV Party and are payable solely from the assets thereof available at such time and amounts derived therefrom and following realization of the assets of such SPV Party, and application of the Proceeds (including proceeds of assets upon which a Lien was purported to be granted) thereof in accordance with this Agreement, all obligations of and any remaining claims against such SPV Party hereunder or in connection herewith after such realization shall be extinguished and shall not thereafter revive. No recourse shall be had against any officer, director, employee, shareholder, administrator or incorporator of the SPV Parties or their respective successors or assigns for any amounts payable hereunder. Notwithstanding any other provision of this Agreement, no Person may, prior to the date which is one year (or if longer, any applicable preference period) and one day after the Discharge of Senior Secured Debt Obligations, institute against, or join any other Person in instituting against, the SPV Parties any Insolvency or Liquidation Proceeding, or any proceedings under Cayman Islands, U.S. federal or state bankruptcy or similar laws. Nothing in this Section 10.22 shall preclude, or be deemed to estop, the parties hereto (i) from taking any action prior to the expiration of the aforementioned period in (A) any case or Insolvency or Liquidation Proceeding voluntarily filed or commenced by any SPV Party or (B) any involuntary Insolvency or Liquidation Proceeding filed or commenced by any other non-affiliated Person, or (ii) from commencing against any SPV Party or any of its property any legal action which is not an Insolvency or Liquidation Proceeding. It is understood that the foregoing provisions of this Section shall not (x) prevent recourse to the assets of the SPV Parties (including, in the case of Loyalty Co and Hold Co 3, the Collateral and sums due or to become due under any security, instrument or agreement which is part of the Collateral) or (y) constitute a waiver, release or discharge of any Indebtedness or obligation secured hereby until all assets of SPV Parties (including, in the case of Loyalty Co and Hold Co 3, the Collateral and sums due or to become due under any security, instrument or agreement which is part of the Collateral) have been realized. It is further understood that the foregoing provisions of this Section shall not limit the right of any Person to name any SPV Party as a party defendant in any proceeding or in the exercise of any other remedy hereunder, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Persons.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written above.

BORROWERS:

SKYMILES IP LTD., a Cayman Islands exempted company with limited liability

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

DELTA AIR LINES, INC., a Delaware corporation

By: /s/ Kenneth W. Morge II
Name: Kenneth W. Morge II
Title: Vice President and Treasurer

GUARANTORS:

SKY MILES HOLDINGS LTD., a Cayman Islands exempted company with limited liability

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

SKYMILES IP HOLDINGS LTD., a Cayman Islands exempted company with limited liability

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

[TERM LOAN CREDIT AND GUARANTY AGREEMENT]
SKYMILES IP FINANCE LTD., a Cayman Islands exempted company with limited liability

By: /s/ Barbara Quiroga
Name: Barbara Quiroga
Title: Vice President and Treasurer

[TERM LOAN CREDIT AND GUARANTY AGREEMENT]
BARCLAYS BANK PLC,
as Administrative Agent

By: /s/ Tom Blouin
Name: Tom Blouin
Title: Managing Director

BARCLAYS BANK PLC,
as Lender

By: /s/ Tom Blouin
Name: Tom Blouin
Title: Managing Director

U.S. BANK NATIONAL ASSOCIATION, as
Collateral Administrator

By: /s/ J. David Dever
Name: J. David Dever
Title: Vice President

[TERM LOAN CREDIT AND GUARANTY AGREEMENT]